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KEY AND ELPHINSTONE'S
COMPENDIUM
OF
PRECEDENTS
IN
CONVEYANCING

TWELFTH EDITION,
VOL. 2, PART 2.

BY
FREDERICK TRENTAM MAW, B.A., LL.B.
JOINT AUTHOR OF ROBBINS AND MAW ON THE DEVOLUTION OF REAL ESTATE
AND ADMINISTRATION OF ASSETS,
OF LINCOLN'S INN, BARRISTER-AT-LAW;

AND
HOWARD WADE RENSHAW, B.A., LL.B.
OF THE INNER TEMPLE, BARRISTER-AT-LAW.



LONDON:
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1927.



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(3)...832; (9)	778		
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ABBREVIATIONS.

*Abbreviations used in the Precedents, in some parts of text printed in italics,
and in so much of the Notes as are printed in text type.*

absolutely . . .	absolly	beneficial . . .	benefl
according . . .	accdg	bequeathed . . .	bequed
accordingly . . .	accdly	between . . .	betn
account . . .	acct	borrower . . .	borr
acknowledge . . .	acknowe	building . . .	bldg
acknowledgment . . .	acknmt	calendar . . .	calr
additional . . .	addonal	capital . . .	capl
administration . . .	admon	certain . . .	certn
administrators . . .	{ ads	certificate . . .	certfe
	{ admors	charge . . .	chge
advance . . .	advce	children . . .	chln
aforsaid . . .	afsd	circumstances . . .	circes
afterwards . . .	aftwds	codicil . . .	codl
against . . .	agst	commissioners . . .	commrs
agreed . . .	agrđ	company . . .	Co
agreement . . .	agrmt	comprised . . .	comprd
amount . . .	amt	consideration . . .	conson
annual . . .	annl	consolidated . . .	consold
annuity . . .	anny	contained . . .	contd
another . . .	anor	containing . . .	contg
appoint . . .	appt	conversion . . .	convon
appurtenant . . .	appurtt	conveyance . . .	convce
appurtenances . . .	appurts	co-partnership . . .	co-ptnp
arbitrator . . .	arbitror	county . . .	coy
assign . . .	assn	covenant . . .	covt
attain . . .	attn	creditor . . .	credor
attorney . . .	atty	customary . . .	custy
bankrupt . . .	bkpt	daughter . . .	daur
bankruptcy . . .	bkcy	debenture . . .	debe
before . . .	bfe	deceased . . .	decēd

declaration . . .	declon	hereafter . . .	hrafter
declared . . .	decl'd	hereby . . .	hby
defendant . . .	deft	herein . . .	hrin
deliver . . .	delr	hereinafter . . .	hrinar
delivery . . .	dely	hereinbefore . . .	hrinbfe
departments . . .	deptmts	hereof . . .	hrof
described . . .	descd	hereon . . .	hron
description . . .	descron	hereto . . .	hto
difference . . .	diffce	hereunder . . .	hrunder
director . . .	diror	hereunto . . .	hrunto
dividend . . .	divd	herewith . . .	hrwith
division . . .	divon	howsoever . . .	howsr
document . . .	doct	husband . . .	husbd
either . . .	eir	immediately . . .	immedly
entitled . . .	entld	incorporated . . .	incorpd
equal . . .	eql	incumbrance . . .	incumbce
estate . . .	este	indenture . . .	indre
execute . . .	exte	insurance . . .	insce
execution . . .	exon	intended . . .	intd
executors . . .	{ exs exors	interest . . .	intt
exercise . . .	exse	joint . . .	jt
exercisable . . .	exsble	lawful . . .	lful
expense . . .	expse	legacy . . .	legy
expression . . .	expron	limited . . .	limd
expressly . . .	exply	machinery . . .	machy
following . . .	follg	maintain . . .	mtain
funeral . . .	funl	maintenance . . .	maintce
general . . .	genl	manner . . .	mner
grand { before child, &c., or any word of re- lationship, &c. }	gd	marriage . . .	marre
grandchildren . . .	grandchln	matter . . .	mre
grant . . .	grt	memorandum . . .	mem
guardian . . .	gdian	mentioned . . .	mentd
heirs . . .	hrs	messuage . . .	messe
hereditaments . . .	hds	mineral . . .	minl
		money . . .	moy
		mortgage . . .	mtge
		mortgagee . . .	mtgee
		mortgagor . . .	mtgor
		necessary . . .	necy

neither . . .	neir	purpose . . .	ppose
nevertheless . . .	nevs	pursuance . . .	psuance
notwithstanding . . .	notwithh- stdg	pursuant . . .	psuant
occasioned . . .	occasd	quarter . . .	qtr
ordinary . . .	ordy	railway . . .	rly
original . . .	origl	reasonable . . .	reasble
otherwise . . .	orwise	receipt . . .	rect
paid . . .	pd	received . . .	reced
parcel . . .	pcel	redemption . . .	redmon
part . . .	pt	referred . . .	refd
particular . . .	parlar	register . . .	regr
parties . . .	pties	registered . . .	regrd
partner . . .	ptner	registrar . . .	regtr
partnership . . .	ptnp	release . . .	rele
per cent., per annum	p.c., p.a.	remainder . . .	remr
perform . . .	pform	representative . . .	repve
person . . .	pson	required . . .	reqd
plaintiff . . .	pltf	request . . .	reqt
policy . . .	poly	requisition . . .	requon
policies . . .	pols	residuary . . .	residy
possessed . . .	possed	respect . . .	respt
possession . . .	posson	respective . . .	respive
power . . .	pwr	respectively . . .	resply
precedent . . .	prec	reversionary . . .	revy
preceding . . .	precdg	right . . .	rt
premises . . .	premes	said . . .	sd
presents . . .	psnts	schedule . . .	{ schdle sched
previous . . .	prevs	security . . .	secy
principal . . .	ppal	secured . . .	secd
proceed . . .	pceed	several . . .	sevl
produce . . .	pduce	shall . . .	shl
proper . . .	pper	should . . .	shd
property . . .	ppty	singular . . .	singr
proprietor . . .	proptor	society . . .	socy
provided . . .	provd	solicitor . . .	solor
provision . . .	provon	statutory . . .	staty
proviso . . .	provo	stock . . .	stk
purchase . . .	pchase	subject . . .	subjt

subsequent . . .	subseqt	whereupon . . .	whrupon
succession . . .	succon	which . . .	wch
successor . . .	succor	whichever . . .	wchr
sufficient . . .	sufft	whomsoever . . .	whomsr
supplemental . . .	suppl	without . . .	witht
surrender . . .	surr	witnesseth . . .	witneth
survivor . . .	survor	would . . .	wd
testamentary . . .	testy	year . . .	yr
testator . . .	testor		
thereabouts . . .	thrabts		
thereafter . . .	{ thrafter thrinar		
thereby . . .	thby		
therefor . . .	thrfor		
therefrom . . .	thfrom		
therein . . .	thrin		
thereinafter . . .	thrinar		
thereinbefore . . .	thrinbfe		
thereof . . .	throf		
thereon . . .	thron		
thereout . . .	{ thout throu		
thereto . . .	thto		
thereunder . . .	thrunder		
thereupon . . .	thrupon		
therewith . . .	{ thwith thrwith		
together . . .	togr		
trustee . . .	tree		
whatsoever . . .	whatsr		
whereas . . .	whas		
whereby . . .	whby		
wherein . . .	whrin		
whereof . . .	whrof		
wheresoever . . .	whresr		
whereto . . .	whto		

at end of word

-ance
-ence
-ience
-uance } -ce

-ment . -mt

-ation
-etion
-ition
-ution
-action
-ection
-iction
-uction }
-hold

in words of more than two syllables

-on

-hd

-ing . at end of word of more than one syllable where following a consonant . -g

It will of course be understood that the abbreviation of a word is used in the plural of the word, and also in words derived from it, unless otherwise stated :—Thus

appoint . . .	appt
appoints . . .	appts
appointor . . .	apptor

ADDENDA ET CORRIGENDA.

- Page 4 Line 10. After s. 94 (2) and line 49 after s. 89 (6), *add* : “ as amended by L. P. (Amendment) Act, 1926.”
- „ 5 Line 24. After s. 10 (6), *add* : “ as amended by L. P. (Amendment) Act, 1926.”
- „ 14 Line 3 of note (a). After s. 14, *add* : “ as amended by L. P. (Amendment) Act, 1926.”
- „ 16 Line 1 of text. Omit the word “ sd ” where it first occurs.
- „ 16 Line 30 of note. After *Re Witham*, *add* : “ *Re Jauncey*, [1926] Ch. 471.”
- „ 22 Line 2 of note (d). After “ 1001 yrs, &c,” *add* : “ [3001 yrs from the 1st Jan. 1926, *if the mortgage were made before 1926*].”
- „ 24 Line 10 of text. For “ mtgee,” *read* “ borr.”
- „ 33 Line 21 of note (d). After s. 94 (2), *add* : “ as amended by L. P. (Amendment) Act, 1926.”
- „ 34 Last line of text. After “ under,” *read* “ this deed.”
- „ 44 Line 20 of text. For “ W. C. Acts, 1906 to 1923,” *read* “ W. C. Act, 1925.”
- „ 62 Line 5 of note (b). For “ ratified,” *read* “ certified.”
- „ 69 Line 11 of text. For “ W. C. Acts, 1906 to 1923,” *read* “ W. C. Act, 1925.”
- „ 87 Last line of note (a). After s. 89 (6), *add* : “ as amended by L. P. (Amendment) Act, 1926.”
- „ 92 Line 3 of note. For “ s. 97 (2),” *read* “ s. 96 (2) as amended by L. P. (Amendment) Act, 1926.”
- „ 93 Line 17 of text. Omit “ with first variation in note (b), on p. 26.”
- „ 97 Line 4 of text. For “ assns,” *read* “ demises.”
- „ 99 Last line of note (b). *Add* : “ *Re Egerton S.E.*, [1926] Ch. 574.”
- „ 100 Line 14 of text. Delete “ (e).”
- „ 107 Line 25 of note (a). Omit “ this is authorised by the settlement or.”
- „ 121 Line 5 of text. *Add* : inside brackets, “ And whas the sd ppty is now vested in — & —.”
- „ 134 Line 8 of text. For “ hrinar,” *read* “ hrinbfe.”
- „ 138 Lines 3 and 5 of text. For “ hrinar,” *read* “ hrinbfe.”
- „ 139 Line 4 of note (b). *Add* : “ *Re Egerton S.E.*, [1926] Ch. 574.”
- „ 141 At end of first sentence of note (a). *Add* : “ See L. P. (Amendment) Act, 1926.”

- Page 153 Line 3 of note (c). For "receipt of," read "payment by"; and for "for the ppal," read "of the ppal."
- „ 157 At the end of the first paragraph of note (a) after "Vol. I., p. 436." Add: "Amended by L. P. (Amendment) Act, 1926."
- „ 158 Line 16 of note on Bills of Sale. After "13 Eliz. c. 5, s. 2," add: "re-enacted by s. 172 of the L. P. Act, 1925."
- „ 162 Line 37. After "*Davidson v. Carlton Bank*," add: "*Herbert's Trustee v. Higgins*, [1926] Ch. 794."
- „ 177 Note (b). Add: "see L. P. (Amendment) Act, 1926."
- „ 178 Line 4 of text. For "p. 24, f. 7," read "p. 28, f. 9."
- „ 193 Line 6 of text. Delete "the Official Trees of Charitable Funds."
- „ 200 Last line of note (c). For "sub tit, Miscellaneous Precedents Note," read "p. 657."
- „ 206 Line 13 of note (a). After "s. 2 (2)," add: "as amended by L. P. (Amendment) Act, 1926."
- „ 213 Last line of note (c). Add: "as amended by L. P. (Amendment) Act, 1926."
- „ 215 Line 6 of note (d). After "s. 2 (2)," add: "as amended by L. P. (Amendment) Act, 1926."
- „ 220 Line 11 of text of Prec. LVIII. For "costs," read "covenants."
- „ 220 Line 1 of note (b). Delete "substituting A for I."
- „ 228 Line 1 of text. For "Prec. I., p. 83," read "Prec. XVIII., p. 115."
- „ 240 Line 2 of title to Prec. LXVIII. For "Mortgagee," read "Mortgagor."
- „ 240 Lines 7 and 8 of note (a). Delete the words in inverted commas.
- „ 248 Line 5 of text. For "in mtge to," read "vested in."
- „ 249 Line 17 of text of Prec. LXXXVI. For "transferee," read "transferor."
- „ 252 Delete lines 7—9 of text of Prec. LXXIX.
- „ 255 At the end of note (b), add: "see L. P. (Amendment) Act, 1926."
- „ 264 Line 2 of text of Prec. XC. Delete the words "being a certain other mtge dated, &c., & made, &c.," and in line 5 after the word "mtge," add: "dated, &c., & made, &c." Delete (c) in line 9.
- „ 276 Line 12. For "L. R. R. 233," read "L. R. R. 223."
- „ 277 Title to Prec. I. For "Land Registry," read "H.M. Land Registry."
- „ 291 Line 28 of text. For "W. C. Acts, 1906—1923," read "W. C. Act, 1925."
- „ 314 Line 20 of text. For "W. C. Acts, 1906—1923," read "W. C. Act, 1925."
- „ 329 Line 10 of note (e). Delete from "Where the reversion" to "*Re Bebington's Tenancy*, [1921] 1 Ch. 559," and substitute: "See s. 140 of the L. P. Act, 1925, as amended by s. 2 of the Act of 1926, for the effect of a severance of the reversion upon a notice to quit."
- „ 329 Delete last sentence of note (e).
- „ 333 Line 2 of note (c). After "*Torrins v. Walker*," add: "*Griffin v. Pillet*, [1926] 1 K. B. 17."

- Page 335 Line 2 of note (*h*). After "*Hamilton-Gell v. White*," add :
 " *Westlake v. Page*, [1926] 1 K. B. 298."
- „ 338 Line 1 of note (*c*). After "s. 27," add : "as amended by L. P.
 (Amendment) Act, 1926."
- „ 350 Line 8 of f. 14. For "W. C. Acts, 1906—1923," read "W. C.
 Act, 1925."
- „ 359 Line 5 of note (*b*). For "Limited Partnership Act," read
 "L. P. Act."
- „ 359 At end of note (*b*). Add : "see L. P. (Amendment) Act, 1926."
- „ 491 Line 5 of clause 8. For "claim," read "clause."
- „ 515 Line 34 of note. For "breach or trust," read "breach of trust."
- „ 549 Last line of note. Add : "*Re Gray*, [1927] 1 Ch. 242."
- „ 585 Line 3 of note (*a*). For "p. 393," read "p. 593."
- „ 602 Line 1 of note (*b*). For "p. 611," read "p. 511."
- „ 613 Line 5 of clause 4 of text. For "ppty," read "properly."
- „ 615 Last line of clause 6 of text. For "p. 573, f. 3," read "p. 512,
 f. 2."
- „ 683 Line 4 of sub-clause (*iv*). For "freeholds," read "land."
- „ 683 Note (*d*). For "p. 548, note (*d*)," read "p. 579, note (*g*)."
- „ 686 Line 4 of text. For "p. 532," read "p. 537."
- „ 738 Line 1 of note (*c*). For "not," read "now."
- „ 793 Delete lines 1 and 2 and first word of line 3 of note (*i*).



RELEASES (a).

I.

RELEASE *by* LEGATEE *on* PAYMENT *to* him *of* a LEGACY
charged on REAL *in aid of* PERSONAL ESTATE (b) *by*
the WILL *of* a TESTATOR *who died before* 1926.

THIS RELEASE made by A. of, &c. WHAS X. late of, &c., decd, being at the date of his death hrinar recited seised in fee simple in posson of certain real este situate at — duly made his will, dated, &c., & thrby after apptg E. of, &c., & F. of, &c., to be exors throf bequeathed to the sd A. a legacy or sum of £——, & charged the same in case of the deficiency of his psonal este on his sd real este, & subject & charged as afsd devised his sd real este to B. in fee simple. *Death of testator & probate, Vol. I., p. 457, f. 3.* AND WHAS the sd E. & F. have assented to the devise contained in the sd will to the sd B. (b) ; AND WHAS the sd legacy of £—— (c) bequeathed to the sd A. by the sd will & all intt thron has been pd to the sd A. out of the psonal este of the sd testor, as the sd A. hby acknowes : NOW THIS DEED WITNESSETH that in conson of the premes the sd A. as **benefl owner** hby releases & dis-

Recitals.

Wit-
nesseth.

(a) As to releases generally, see 5 Dav. Prec., 2nd ed., pt. 2, p. 617 ; Elph. Introd., 7th ed., 620.

The stamp on the release of any property (not being upon a sale or mortgage) is 10s., see Stamp Act, 1891, Sched. tit. RELEASE. If the instrument contains an indemnity as well as a release it does not according to the present practice require another 10s. stamp.

(b) It is assumed that the assent was made before 1926.

(c) A legacy payable out of personal estate only is liable to legacy duty, but not to any proportion of the estate duty : but to the extent to which it is payable out of real estate, it is not liable to legacy duty, but is liable to succession duty : Customs, &c., Act, 1888, s. 21 ; and to its proportion of estate duty : *Re Spencer Cooper*, [1908] 1 Ch. 130.

charges all the sd messes, lands, tenemts, & ppty, situate at, &c., & all other (if any) the ppty charged with the paymt of the sd legacy, & also the sd B., his exs, ads, & assns, & the este of the sd testor, & all other psons & ppty whom it may concern, from the sd legacy or sum of £—— & the intt thron & all claims & demands in respt throf. IN WITNESS, &c.

II.

RELEASE of PART of SETTLED ESTATES from a MORTGAGE of a TERM for raising PORTIONS, made before 1926, to ENABLE a SALE to be effected (d).

Recitals.
Title of
tenant
for life.

PARTIES, P. & Q., *mtgees*, 1; A., *tenant for life*, 2. *WHAS* by an appointmt dated, &c., K., who was then tenant for life in posson of the ppty devised by the will dated the —— day of —— & proved on the —— day of —— in, &c., of X. who died on the —— day of ——, in exercise of a power given to him by the sd will, *Recite charge of portions in favour of K.'s younger children, & limitation to trees of term of yrs for securg the same; mtge by demise by trees of term to P. & Q., to secure £——, part of the portions;* *AND WHAS* by a vestg deed dated, &c., & made, &c., all the ppty devised by the sd will, & of wch, under a compound settlemt consistg of the sd will & a disentailing deed & resettlemt subject to the sd mtge resply

(d) The incumbrance might be transferred to other parts of the settled estate under the S. L. Act, 1925, ss. 69 and 82, or money might be raised by mortgage of such other parts for the purpose of discharging it under s. 71, see *ante*, p. 270, note, and Precedent XCVII; or a sum might be set apart to provide for the incumbrance, and the land sold free therefrom under the L. P. Act, 1925, s. 50. A mere direction by the Court to set aside part of the property charged to meet an incumbrance and for distribution of the rest of the property will not discharge the latter part from the incumbrance: *Re Evans & Bettell*, [1910] 2 Ch. 438, and see *Nightingale v. Reynolds*, [1903] 2 Ch. 236. If the land is registered any entries made for securing the unpaid portions may require alteration.

The concurrence of the portionists and their trustees is unnecessary, as their respective equitable interests will be overreached by the exercise by the tenant for life of his statutory power of sale under the compound settlement.

Where the portions have been raised since 1925 the deed will commence with a recital of the vesting deed.

recited in the sd vestg deed, the sd A. had then become tenant for life in posson, was vested in the sd A. in fee simple subjt to the sd mtge upon the trusts & subjt to the powers & provons upon & subjt to wch under the sd compound settlemt or orwise the same ought thenceforward to be held. *State of mtge debt*, p. 12, f. 11. AND WHAS by the effect of the transitional provons contained in the Second Schdle of the S. L. Act, 1925 (e), the legal este in the sd term of — yrs so limited to the sd — & — as afsd was converted into an equitable intt as from the date of the execuon of the sd vestg deed & merged accordly in the freehd reversion of the sd devised premes AND WHAS the sd A. as tenant for life under the sd compound settlemt & by virtue of the powers of the S. L. Act, 1925, has agrd to sell the ppty hby released & for the ppse of carrying into effect the sd sale has requested the sd P. & Q., to release the same ppty from the sum of £—— so due as afsd for ppal & intt on the recited mtge, wch they have agrd to do, being satisfied that the residue of the ppty on wch the sd mtge debt is charged is a sufft secy for the same & the intt thron (f): AND WHAS the sd P. & Q. have agrd, at the request of the sd A., to make such surrender of the ppty so agrd to be sold as afsd as is hrinar contd: NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH that the sd P. & Q. at the request of the sd A. and as mtgees hby surrender & release unto the sd A., ALL & SINGR the sd — & ppty specified in the schdle hto, freed & discharged from all ppal moys & intt due & owing to the sd P. & Q. on the secy of & from all claims & demands under the recited mtge, To the intent that the sd mtge term of — yrs less — days in the sd premes may merge & be absolutely extinguished in the freehd & inheritance throf. PROV'D ALWAYS, that nothing hrin contd shl prejudice or affect the secy of the sd P. & Q., under the recited mtge so far as regards the other ppty comprised thrin. IN WITNESS, &c.

The Schdle above referred to.

Contract
for sale.

Agree-
ment to
release
portions
and mort-
gage.

Mort-
gagees
and
trustees
to join.

Wit-
nesseth.
Release
of mort-
gage.

Proviso.

(e) See sub-paragraph 6. The legal term vested in the mortgagees is excepted from the operation of the sub-paragraph by a minor amendment of the L. P. Act, 1926.

(f) For a recital where other security is substituted, see the next Precedent.

III.

RELEASE of VARIOUS INCUMBRANCES on SETTLED ESTATES *contracted to be sold, the INCUMBRANCES NOT being PAID OFF, but OTHER SECURITY having been SUBSTITUTED (a).*

*PARTIES, Incumbcers, of first, second, & third pts ; A., tenant for life, of fourth pt. Recite vestg deed subjt to incumbces ; AND WHAS a sum of moy is still due to each of the sd respective mtgees on their sd respective secs ; AND WHAS the sd A. has agrd to sell the — & ppty hby released to X., of, &c., & for the ppose of carrying into effect the sd sale has requested the sd respective mtgees to release the premes so agrd to be sold from their sd sevl mtge secs, wch the sd mtgees have agrd to do upon havg other sufft secy given to them resply for their sd mtge debts, wch secs have been already effected & completed, as they the sd mtgees hby resply acknowe : NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH that the sd pties hto of the first, second, & third pts as mtgees accordg to their sevl estes & intts under the sd respective mtges in the ppty hrinar described & released, do resply hby surr unto the sd A., *Parcels, Terms to merge, p. 24, f. 7, mutatis mutandis.* IN WITNESS, &c.*

Recitals. State of mortgage debts. Agree-ment. Wit-nesseth. Surrender.

IV.

RELEASE of a PERPETUAL RENT-CHARGE on its PURCHASE by the OWNER of the ESTATE, so as to be kept on foot (b).

THIS CONVEYANCE made btn *PARTIES, A., owner of rent-charge, 1 ; B., owner of estate, 2. Recite creation of, &*

Recitals.

(a) See last Precedent, and note (d) thereto. As none of the mortgages are paid off reconveyances by receipts are inappropriate ; see *ante*, pp. 5 and 253, note (d).

(b) It is assumed that there are other outstanding rent-charges or incumbrances payable *pari passu*, or subsequently created by a previous owner. As to the release of part of the land from a rent-charge, see Vol. I., p. 69. There is no necessity to convey the rent-charge to trustees for the estate owner of the land to prevent a merger : see L. P. Act, 1925, s. 185. If trustees are introduced there must be at least two of them, and the rent-charge must be conveyed to them on trust for sale.

devolution of title to rent-charge, & B.'s title to estate; AND WHAS the sd B. has pd to the sd A. the sd rent-charge & all arrears throf to the date of this deed, as the sd A. hby acknowes; AND WHAS the sd B. has agrd with the sd A. to pchase his este in the sd rent-charge of £—— for the sum of £——: NOW THIS DEED made in psuance, &c., *conson, rect*, WITNESSETH as follows:—

Payment
of rent-
charge.
Agree-
ment.
Wit-
nesseth.

Grant.

1. THE SD A. as benefl owner hby grts & assns unto the sd B., ALL THAT the sd perpetual annuity or yrly rent-charge of £—— so given & devised to him the sd A. by the sd will of the sd —— deced, *or*, “created by the sd deed of, &c.,” as afsd, & all future claim & demand of him the sd A., to, or concerng the sd annuity & premes, togr with all powers & remedies for enforeg & recoverg paymt throf: To HOLD the same UNTO the sd B. in fee simple.

Rent-
charge.

Haben-
dum.

2. AND IT is hby agreed & declared that the sd rent-charge & the fee simple & inhance throf may be kept distinct from the sd messes & lands charged with the paymt throf & the fee simple & the inheritance throf, & not be merged or extinguished thrin. IN WITNESS, &c.

Declara-
tion
against
merger.

V.

RELEASE to TRUSTEES of MARRIAGE SETTLEMENT (*comprising PERSONAL ESTATE in POSSESSION and REVERSION, and a POLICY on the HUSBAND'S LIFE*) on DISTRIBUTION of the TRUST FUNDS, with the EXCEPTION of SHARES belonging to INFANTS. THE DEALINGS with the TRUST FUNDS and other transactions being RECITED IN DETAIL, and an INDEMNITY being given to the TRUSTEES in respect of certain BREACHES of TRUST (c).

PARTIES, A., husbd & repve of deced daur, 1; B., eldest son & also exor of last tenant for life, 2; C. & D. his wife, a married

Parties.

(c) Where a release is given to trustees on the distribution of settled funds, it generally happens that one or more deaths in respect of which duty

Death
duties.

Recitals. *daur* (a), 3; E. & F., *trees of daur's settlemt*, 4; G., *a son*, 5; H. & I., *trees of settlemt*, 6; WHAS by a settlemt, dated, &c., &

became payable have occurred since the constitution of the trust. Where the duty has been paid by the trustees, a recital of the payment should be inserted in the release. The following is a general form of such recital:—

“WHAS on the — day of — the trees raised the sum of £— (being the amt payable for — duty on the death of the sd A. in respt of the trust premises [or, “the ppty then subjct to the trusts of the settlemt,” or, “the sd sum of £— Consols”] & also the sum of £— for their costs relating to the assessmt & paymt of the sd duty by the sale of £— [pt of the sd sum of £— stock] & applied the same in paymt of the sd duty & costs.”

As the question whether any and what duty became payable depends on the time of the death and the nature of the property, it is not possible in a note of this nature to state precisely what duty will have become payable nor the exceptional cases in which none was payable; but a short statement of the nature of the various duties is given here as a guide to the draftsman. For further information reference must be made to Hanson, Dymond, Austen Cartmell and Norman.

Probate duty.

On the death of a person (wherever domiciled) before the 2nd August, 1894, probate duty (see Stamp Act, 1815, and the Customs, &c., Act, 1881) was payable by the personal representatives of the deceased in respect of his personal property (including partnership realty and realty impressed in his lifetime with a trust for sale) except such property as was out of the jurisdiction of the Court granting the probate or administration at the time when it was granted.

Account duty.

On a death after the 1st June, 1881, and before the 2nd August, 1894, account duty, imposed by the Customs, &c., Act, 1881, s. 38 (amended by the Act of 1889, s. 11), became payable in respect of certain voluntary gifts and settlements of personal property including leaseholds. Section 11 of the Act of 1889 is retrospective: *Att.-Gen. v. Theobald*, 24 Q. B. D. 557. This duty was superseded by estate duty in cases of death after the 1st August, 1894.

Temporary estate duty.

On the death of a person on or after the 1st June, 1889, an additional duty called temporary estate duty, imposed by the Customs, &c., Act, 1889, s. 5, became payable where the value of the property liable to probate duty exceeded £10,000. This duty ceased to be leviable where the death occurred after the 1st June, 1896, or, in the case of property chargeable with estate duty under the Fin. Act, 1894, after the 1st August, 1894.

Estate duty.

On the death of any person after the 1st August, 1894, estate duty is payable under the Fin. Act, 1894; (1) if the deceased was domiciled

(a) Where the married woman is absolutely entitled as a *feme sole* under the M. W. P. Act, 1882, or for her separate use under the old law, the husband need not concur, unless to guard against the possibility of his wife having made a disposition in his favour, or to enter into covenants.

made, &c. (being the settlement made in consonance of a marriage shortly afterwards solemnised between the said K. & L. & hereinafter

Settlement.

in the United Kingdom, on all his property, real or personal, settled or unsettled, except immovable property situate abroad; (2) if the deceased was not domiciled in the United Kingdom, on all his property, real or personal, settled or unsettled, situate in the United Kingdom, including property in which he took a life interest which was at his death subject to a British settlement or vested in a British trustee. The personal representatives have to pay the duty on all property which passes to them as such, and may pay the duty on any property which, by virtue of a testamentary disposition, is under their control or on property not under their control at the request of the person accountable. A rateable part of the estate duty in proportion to the value of any property which does not pass to the personal representatives as such is a first charge on the property in respect of which duty is leviable, but not as against a purchaser for value without notice. Local death duties on property situate in British possessions may, in certain cases, be deducted from the estate duty.

In cases of deaths between the 1st of August, 1894, and the 15th of August, 1914, estate duty was not leviable on settled property in respect of which that duty had already been paid since the date of the settlement, nor was it leviable on property settled by a will in respect of which probate duty (including account stamp duty) had been paid or was payable, unless in any such case the deceased was at his death or had been at any time during the continuance of the settlement, or since the will or disposition took effect, competent to dispose of the property.

Previous exemption from estate duty.

The exemption from estate duty of settled property in respect of which that duty had already been paid was counterbalanced by the imposition of settlement estate duty. The last mentioned duty was leviable under the Fin. Act, 1894, s. 14, in cases of deaths after the 1st of August, 1894, in respect of settled property passing to some person not competent to dispose of it; but the duty was not payable where the settlement took effect before the commencement of the Act, nor where the only life interest was that of a wife or husband of the deceased. It was payable once only during the continuance of the settlement.

Settlement estate duty.

The Fin. Act, 1914, abolished settlement estate duty in cases of deaths after the 11th of May, 1914, and also abolished the exemption from estate duty above mentioned in cases of deaths after the 15th of August, 1914, except in cases where probate or estate duty has been paid or is payable on the death of one of the parties to a marriage so far as respects the payment of estate duty on the death of the other party. With this solitary exception estate duty is now payable on each passing of the property in spite of payments of estate duty or probate duty on earlier deaths. For cases of remission of estate duty in the cases of persons killed in action in the war see Hanson, and Dymond. See further as to estate duty, Vol. I., p. 90.

Exemption from estate duty on death of survivor of husband and wife.

Settlement estate duty payable in respect of personalty settled by the will of the deceased was payable (unless the will directed otherwise) out of that property, in exoneration of the rest of the estate.

On the death of any person after the 30th April, 1909, increment value duty, imposed by the Fin. (1909-10) Act, 1910, was leviable upon the increment value of any land the fee simple of or any interest in which (as defined by s. 41 of the Act) is comprised in the estate of the deceased. This duty was

Increment value duty.

called the settlemt), certain pts or shares to wch the sd L. was entitled in mner thrin appearg in reversion expectant on the death of M. & N., her father & mother, of & in the trust funds & ppty thrin mentd, were assned to O. & P. upon the trusts thrinar declared, & it was thereby declared that after the then intd marre the sd O. & P., their exs & ads, shd stand possed of the sd pts or shares thereby assned when the same shd fall into posson & be reced, & also of the sum of £—— then seed at intt by a mtge thrin referred to (wch sum, togr with the seey for the same, had been transferred to the

payable exclusively out of the property in respect of which it was leviable. This duty, collected in very few cases, was abolished by Fin. Act, 1920, s. 57.

Legacy
duty.

Legacy duty is payable in respect of residue or shares of residue of personal estate, whether taken under a will or on an intestacy; and in respect of gifts by will in any form payable out of the personal estate of the testator, or out of any personal or movable property of which he could dispose as he thought fit; and in respect of *donationes mortis causâ*. For this purpose personalty includes partnership real estate. In the case of persons dying before July 1st, 1888, legacy duty was also payable in respect of gifts payable out of real estate or the proceeds of sales or other dispositions thereof; but on that date such gifts became liable to succession instead of legacy duty. In the case of persons dying before the 30th April, 1909, no duty was payable on legacies to husband or wife; for other exemptions, of which there are a large number, see 2 Norman, 3rd ed., p. 207. The liability of property to the duty depends upon the domicile of the owner, except in the case of immovables which are personalty by equitable conversion only. The statute law on the subject of legacy duty is very complicated; see Robbins & Maw, 4th ed., p. 253; 2 Norman, 3rd ed., pp. 228, 248; Hanson, 6th ed., 29. As to the liability of trustees for payment of the duty, see Norman, *ib.*, p. 294.

Suc-
cession
duty.

On the death of any person after May 19th, 1853, succession duty is payable under the Succession Duty Act, 1853, in respect of the succession to all property, real and personal, which is not liable to legacy duty. Real property situate in this country is liable to the duty, irrespective of the domicile of the owner; and movable property also is liable if the title to the succession depends on British law. As to the liability of trustees for payment of the duty, see s. 44 of the Act. See further as to succession duty on settled property, Vol. I., p. 91, note.

Indepen-
dent
advice.

As to the advisability of independent legal advice in the case of a release executed by young persons soon after attaining majority, see *Re Garnett*, 31 Ch. D. 1, where the release was set aside on the ground of mistake. The following recital may be inserted:—"AND WHAS in the negotiations for, & the preparon of this deed, the pties hto of the first — pts were advised by Messrs. —, of —, solors, & the sd H. & L. were advised by Messrs. —, of —, solors." A compromise may be valid although all parties employ the same solicitor, if he explains to them what their rights are, even if the compromise is not strictly in accordance with those rights: *Re Roberts*, [1905] 1 Ch. 704.

sd O. & P. by a deed of transfer bearg even date with the settlemt), & of the sum of £—— Annies, wch had also been transferred into their names, & of the ppty for the time being representg the same respective premes, Upon trust either to permit the same to remain in the actual state of investmt throf, or at any time with the consent of the sd K. & L. or the survor of them, & after the death of such survor at the discreon of the trees or tree for the time being, to sell, call in, & convert into moy such respective trust premes, or any pt or pts throf resp'y, & to invest the proceeds, *set out remainder of the trusts for investmt & varying investmts*, & it was thereby declared that the sd trees or tree shd, &c., *recite trusts of the income for K. & L. successively durg their lives, & of the cap'l after their deaths, for their issue as they should appoint, & in default for sons at twenty-one & daurs at twenty-one or marre, & the hotchpot clause*, & the settlemt contd the usual powers & provons for the advancemt of the chln of the sd then intd marre durg minority, & also a provon for the settlemt of any other ppty to wch the sd L. was or might durg the sd intd coverture become entitled of the value of £—— or upwards (except as thrin mentd), upon trusts correspondg with the trusts thrinbfe declared concerning the ppty thrinbfe settled, & by the settlemt the sd K. assned a poly of assurce on his life for the sum of £—— effected in the —— Office & the moys assured by or to become payable under the same to the sd O. & P. to be held after the sd then intd marre, Upon trusts correspondg with the trusts thrinbfe declared concerng the ppty thrinbfe settled (save as regards the ultimate trust throf in the event of such default or failure of chln of the sd marre as thrin mentd) & the settlemt contd a provon for the apptmt of new trees throf in the place of any tree or trees dying or desirg to be discharged & orwise as thrin expressed ; AND WHAS there were six chln only of the sd marre of the sd K. & L., namely, Q. & R., both of whom died under the age of twenty-one yrs, & witht havg been married, a daur, S., who inter-married with the sd A. in the yr ——, & died in the yr —— (a), leavg issue two chln, namely, T. & U., both of whom are livg but are infants under the age of twenty-one yrs, a son, the sd

State of
family.

(a) Any death duties payable on the death of S. would have been paid by her administrator.

Receipt
and in-
vestment
of rever-
sion.

Appoint-
ment of
new
trustee.

Repay-
ment and
invest-
ment of
mortgage
moneys.

Breach of
trust.

Advance-
ment of
child.

Appoint-
ment of
new
trustee.

Payment
of costs
and
transfer
of trust
funds.

B., who has attained the age of twenty-one yrs, a daur, the sd D., who intermarried with the sd C., in the yr —, & a son, the sd G., who has attained the age of twenty-one yrs ; AND WHAS the sd M. died in the yr —, & the sd N. died in the yr — ; AND WHAS shortly after the death of the sd N. the sum of £— was reced by the sd O. & P. as the net amt or value (after deduction & allowce of death duties & expses) of the pts or shares of & in the trust funds & ppty afsd, weh were assned to them by the sd L. by the settlmt, & the sum of £— was pd throuth by the sd O. & P. for costs weh they had incurred in relation to the sd trust premes, & the residue throf, amtg to £—, was invested by them in the pchase of £— £— p.c. India Stk ; AND WHAS by an appointmt dated, &c., & made, &c., the sd H. was under the power for that ppose contd in the settlmt appted a tree throf in the place of the sd O. who retired from the sd trust, & by the same deed & another deed bearg even date therewith (being a transfer of the sd mtge), or by other appropriate means, the ppty then subjt to the trusts of the settlmt was thrupon duly transferred so as to be vested in the sd P. jointly with the sd H. ; AND WHAS in the yr — the sd ppal sum of £— weh was then invested on mtge as afsd was repaid to the sd P. & H., & was invested by them at the request of the sd K. & L. in the pchase of — shares of £— each in the — Rly Co ; AND WHAS such last-mentd investmt was not authorised by the trusts of the settlmt ; AND WHAS in the yr — the sd P. & H., with the consent in writg of the sd K. & L., sold two of such rly shares, & applied the net proceeds throf, amtg to £—, for the advancemt of the sd G., under the power for that ppose contd in the settlmt ; AND WHAS the sd P. died in the yr —, & by an appointmt, dated, &c., the sd I. was, in exercise of the sd power contd in the settlmt, duly appted a tree throf in his place, & by the same deed the sd poly of assuree & the moys assured thereby were assned to the sd H. & I. upon the trusts afsd ; AND WHAS the costs of & incidental to such apptmts & other expses incurred by the sd trees, amtg to £—, were raised by the sale of £—, pt of the sd sum of £— Annies, & the sum of £—, the residue of such Annies, & the sd sum of £— India Stk, & the sd remaing shares of the sd Rly Co were duly transferred to the

sd H. & I.; AND WHAS in the yr — the sd H. & I. at the request of the sd K. & L. sold out eight of the sd rly shares, realising £—— & applied the same in paymt of certain debts wch had been incurred by the sd B., who was then an infant; AND WHAS such last-mentd applicon was a breach of trust or unauthorised, but the sd B. has agrd to treat such sum of £—— as pt of the sum of £—— hrinar recited to have been apptd to him & to give to the sd H. & I. such release in respt throf as is hrinar contd (a); AND WHAS the sd K. died in the yr — wtht havg joined the sd L. in makg any apptmt under the power of joint apptmt among the issue of their sd marre given to them by the settlemt; *payment of duties on death of K.*, p. 458, *note*. AND WHAS shortly after the death of the sd K. the sd trees reced the sum of £—— in respt of the sum assured by the sd poly on his life & addons thereto, & invested the same after payg throuth the sum of £—— for succession duty & costs in the pchase of the sum of £—— p.c. India Stk, makg with the sd sum of £—— the sum of £—— like Stk; AND WHAS by an appointmt, dated, &c., the sd L. apptd that if the then intd marre betn the sd C. & D. shd be solemnised within six calr months from the date of the deed now in recital, the sum of £—— (pt of the ppty subj to the trusts of the settlemt) shd be held in trust for the sd D. absolutely subj to the life intt of the sd L. thrin; AND WHAS by a settlemt dated, &c., & made, &c. (being the settlemt made on the marre of the sd C. & D.), the sd D. assnd the sd sum of £—— to wch she was entitled by virtue of such apptmt as last afsd, to the sd E. & F., their exs, ads, & assns upon certn trusts thrin declared concerng the same, & it was thereby expressly declared that the sd investmt of the sum of £—— in the pchase of the sd rly shares was to be considered (so far as regarded the psons claimg under the settlemt now in recital) a pper investmt of the trust funds of the settlemt; *Apptmt by L. of £—— to B.* & by the same deed the sd L. released her life intt in the income of such sum of £—— to the sd B. to the intent that the same might be vested in him in posson, & be immedly raisable (b); AND WHAS

Sale of part of trust funds, and application in breach of trust.

Death of tenant for life without appointing.

Receipt and investment of policy moneys.

Appointment in favour of a daughter.

Marriage settlement of daughter.

Appointment of sum and release of life interest to son.

(a) This provision is not within the Infants' Relief Act, 1874.

(b) For the purposes of the Finance Act, 1894, and the amending Acts, the property is deemed to pass, notwithstanding the release, on the death

Payment
thereof.

Death of
tenant
for life.

Applica-
tion of
income.

Payment
of death
duties
and costs
(a).

No after-
acquired
property
(b).

shortly after the date of the lastly hrinbfe recited appointmt the sd H. & I. raised the sum of £—— by the sale of the sd sum of £—— Annies, & of the sum of £—— India Stk, pt of the sd sum of £—— like Stk, & after paymt throu of the sum of £—— in discharge of the succession duty wch wd become payable in respt throu on the death of the sd L., they pd the sum of £——, being the residue throu, to the sd B., makg, with the sum of £—— hrinbfe recited to have been pd on acct of the sd B., the sum of £—— so apptd to him as afsd; *Apptmt by L. of £—— to T. & U. subj to her own life intt; Will of L. apptg B. exor.*; AND WHAS the sd L. died on, &c., witht havg made any further apptmt of any pt of the sd trust funds under the power vested in her by the settlemt as afsd: *Probate*; AND WHAS all the income wch accrued from the sd trust funds, or such of them as had for the time being fallen into posson, up to the death of the sd K. (includg the appor- tioned pt belonging to his este of the income accrug due at his death) was duly pd to him, or his repves, & all the income wch subseqtly accrued from the sd trust funds, except such pts throu as had been applied or disposed of as afsd, was duly pd to the sd L. durg her life, as the sd B., as exor of the sd L., hby acknowes; AND WHAS the sd H. & I. have reced £—— in respt of income of the sd trust premes since the death of the sd L., & have pd £——, being the appor- tioned pt throu wch accrued durg the life of the sd L. to the sd B., as her exor, as he hby acknowes, & have applied £——, the residue throu, in paymt of costs incurred in relation to the sd trust; AND WHAS the sd H. & I. lately sold the sum of £——, pt of the sum of £—— India Stk, then remaing in their names as afsd, & have throu pd the remr of the duties (amtg to £——) wch became payable on the death of the sd L. in respt of the sd trust premes, & have retained the sum of £——, being the residue of the proceeds of such sale, to provide for the remaing costs & expses incurred by them in relation to the sd trust & this release; AND WHAS no ppty, real

of the tenant for life within three years: Fin. Act, 1900, s. 11; Fin. (1909-10) Act, 1910, s. 59 (1), (2).

(a) As to the liability to succession duty of sums advanced under a power of advancement, see *Ex p. Sitwell*, 21 Q. B. D. 466.

(b) Though this recital is unnecessary it is often inserted.

or psonal, has at any time been settled under the provons contd in the settlemt for the settlemt of other or after-acquired ppty of the sd L., & no ppty, real or psonal (save as hrinbfe appears), has at any time come to the hands of the sd H. & I. as trees of the sd settlemt or (so far as is known) become subjt to the trusts throf; AND WHAS the acets of the sd trees, showg all the parlars of their rects & disbursemts in relation to the sd trust este & premes, & the dealgs therewith, from the date of the settlemt to the psnt time, have been submitted to all the sd pties hto of the first five pts, & been carefully examined by them, & have been signed by such respective pties in testimony of their approval throf (c); AND WHAS the sd H. & I. have retained the sum of £—— India Stk, weh, at the price of the day, is of the value of £——, to answer the sum so apptd to the sd T. & U., *the infants*, as afsd, & have transferred the residue of the sd stk & —— shares of the sd Rly Co (being togr at the respective market prices of the day of the value of £——) to the sd E. & F., with the approbon of the sd C. & D., in satisfon of the sum apptd to the sd D. as afsd, as they, the sd C., D., E., & F., do resply hby acknowe; AND WHAS the sd remaing —— shares of the sd Rly Co, weh, at the market price of the day, are of the value of £——, & weh represent the portion remaing unapptd of the trust premes, belong wholly to the sd G., the sd pties hto of the first four pts being excluded by the effect of the hotchpot clause contd in the settlemt from takg any share thrin, & such last-mentd rly shares have accordgly been transferred by the sd H. & I. to the sd G., as he hby acknowes; AND WHAS the sd sevl pties hto of the first five pts are satisfied with the applicon, disposon, division, & distribon of the sd trust este & premes hrinbfe recited to have been made, & that such division & distribon is in full satisfon of their respective shares & intts thrin under the settlemt [save as regards any further share or shares weh may hrafter accrue to them resply as hrinar mentd]; AND WHAS bfe the sevl paymts & transfers lastly hrinbfe recited were made, it was stipulated & agrd that the release & indemnity hrinar contd shd be

Accounts.

Reten-
tion of
infants'
shares
and pay-
ment of
daugh-
ter's
share.Transfer
of re-
maing
funds to
son.That
parties
are satis-
fied with
distribu-
tion.Agree-
ment for
release.

(c) This is generally more convenient than scheduling the accounts. A separate statement of account referred to in the release so as to form part of it, though formerly (under the head "schedule" in the Stamp Act, 1870) chargeable with a 10s. stamp, is not so under the Act of 1891.

Wit-
nessest.

Release.

made & given ; NOW THIS DEED made in psuance of the sd agrmt & in conson of the sevl paymts & transfers so made as afsd & of the premes WITNESSETH as follows :—

Covenant
against
incum-
brances.

1. THE SD A., B., C., D., E., F., & G. (d) or, “ the sd respective pties hto of the first five pts ” (the sd B. concurrng hrin as well in respt of his own benefi intt in the premes as in his character of exor of the sd L.), do & each & every of them does hby absolutely release & for ever discharge the sd H. & I. & each of them, their & each of their exs & ads [& also the sd O., his exs & ads, este & effects, & the este & effects of the sd P. deced (a)] from the ppty so pd or transferred by the sd H. & I. or the trees for the time being of the settlemt to the sd B., E., F., & G., as hrinbfe mentd, & all other the trust este & ppty comprised in or wch is or has at any time been subjt to the trusts of the settlemt, & the intt, dividends, & income throf, & every pt throf resply, & from all actions, proceedings, claims, & demands, in relation thereto, or orwise under the trusts of the settlemt [or in respt of any sale, investmt, paymt, allowce, act, or thing whatsr at any time made, done, executed, omitted or neglected by the sd H. & I. or the trees or tree for the time being of the settlemt or any or either of them, in or about the execution of the trusts throf, whether hrinbfe specifically mentd or referred to or not], or for or in respt of anything relatg to the premes, AND each of them the sd respective pties hto of the first five pts as to his or her own acts only hby covts with the sd H. & I. & their respective exs & ads that they the sd covtg pties resply have not done or been party or privy to anything whereby the respective shares & intt of the sd covtg pties in the sd trust este & premes are or may be in any mnner incumbered or affected save as hrinbfe

Trustees
giving
release.

(d) The trustees of the sub-settlement might, in the absence of express authority in their settlement, object, and could not be required to give a release : see *Re Cater*, 25 Beav. 366. In that case they would concur in the deed merely for the purpose of acknowledging the receipt of the share paid to them : see *Elph. Introd.*, 7th ed., 621. The trustees of the original settlement cannot require the sub-settlement to be handed to them : *Re Palmer*, [1907] 1 Ch. 486. Large powers of settling accounts, compromising and giving releases, &c., are given to executors and trustees by the T. Act, 1925, s. 15, which applies to trusts created before as well as since the Act, s. 69 (1).

(a) Words releasing retired, and the estates of deceased, trustees are commonly and properly inserted.

appears or whereby they are resp'y disentitled to share in the division & distribon of the sd trust este & premes in mner hrinbfe appearg.

2. THE SD A., B., C., D., & G. hby jointly covt, & each of them hby sev'ly covts with the sd H. & I., their, & each of their, exs & ads, that they the sd covtg pties & every of them, their & every of their, exs & ads, will at all times hrafter keep indemnified the sd H. & I., & each of them, their & each of their, exs & ads, & also the sd O., his exs & ads, este & effects, & the este & effects of the sd P., deced (b), from all actions, proceedings, claims, & demands on the pt of any pson or psons whomsr, & all costs, damages, & expses whatsr by reason of the investmt of the sd sum of £—— in the pchase of the sd rly shares or the subseqt retention of the sd investmt or any pt throf (c). *If the apptmt to T. & U. (the*

Covenant
of in-
demnity
in respect
of
breaches
of trust.

(b) Where a contract is made for the benefit and on behalf of a third party, there is an equity in that third party to sue on the contract, and the person who has entered into the contract may be treated as a trustee for the person for whose benefit it is entered into: *Lloyd's v. Harper*, 16 Ch. D. at p. 309, and see L. P. Act, 1925, s. 56 (1).

(c) Where one of the shares under a settlement or will has been settled by an instrument not condoning a breach of trust previously committed, a covenant of indemnity by some of the persons *sui juris* interested under the sub-settlement should be inserted as follows: "3. *Joint & several covts by covtors with trees*, that they the sd covtg pties & every of them, their, & every of their, exs & ads, will at all times hrafter keep indemnified the sd, *trees*, & each of them, their, & each of their, exs & ads, & also the este & effects of the sd —— deced, from all actions, proceedings, claims, & demands whatsr, on the pt of any pson or psons claimg under the sd settlemt of, &c., *the sub-settlemt*, by reason or in respt of the sd investmt in rly shares or the retention of such investmt, *or as the case may be*, & from all costs, damages, & expses, occasd by any such action, proceeding, claim, or demand."

Covenant
of in-
demnity
against
breach of
trust.

A general covenant of indemnity by the beneficiaries (each as to his own share) is sometimes added, in the following form, but this is of little (if any) value, unless it be as a protection to the trustees against the possibility that incumbrances may have been created on some of the shares of which notice may have been given, but that, owing to a change of trustees or solicitors or otherwise, such notice has not reached the present trustees. If memoranda of the notices have been entered on the instruments creating the various trusts or a trust corporation has been nominated to receive notices the trustees will not be exposed to this risk: see *ante*, pp. 321, note (b), 323, note (d). In any event trustees can obtain complete immunity

infants) was not absolute, so that a further share may accrue to the releasing pties, add :—

Provision
when
further
shares
may
accrue to
the re-
leasing
parties.

3. THE RELEASE hrinbfe contd shl not extend to the sum of £—— India Stock retained by the trees as afsd, nor to any share or shares of the sd trust ppty wch may hrafter accrue to any of the sd pties hto of the first five pts or their respective exs, ads, or assns, by reason of the sd T. & U. or either of them dying witht attaing a vested intt under the sd deed of apptmt of, &c., nor to any pt of the sd sum of £—— so retained by the sd H. & I. as afsd wch shl remain after paymt

from such claims by advertising for them under s. 27 of the T. Act, 1925, as amended by the L. P. C. Amended Act, 1926, *post*, p. 578. As to the variations in brackets having reference to married women, see *ante*, p. 458, note :

General
cove-
nants
of indem-
nity by
benefi-
ciaries.

“4. Each of them, the sd, *covtors*, as far as relates to the share to wch he [or she] [or his wife] is, or claims to be, entitled in his [or her] own right [or in right of his wife] in the sd trust premes, hby covts with the sd, *trees*, & each of them, their, & each of their, exs & ads, that they, the sd cotg pties & every of them, their & every of their, exs & ads, will from time to time & at all times hrafter keep indemnified the sd, *trees*, & each of them, their, & each of their, exs & ads, & also the este & effects of the sd —— deced, from all actions, proceedings, claims, & demands in respt of the moys, stks, funds, shares, & secs so pd or transferred by the sd trees as hrinbfe recited, or other the trust este, ppty & premes comprised in or now or at any time subjt to the trusts of the settlemt, or the intt, dividends, or income throf or any pt throf resply, or orwise, under the trusts of the settlemt, [or of any sale, investmt, paymt, allowce, act, or thing whatsr, at any time made, done, executed, or omitted by the sd trees or tree for the time being of the settlemt or either or any of them, in or about the execution of the trusts throf, whether hrinbfe specifically mentd or referred to or not], & from all costs, damages & expses to be occasd by any such action, proceeding, claim, or demand as afsd, or orwise in respt of the premes. [Provd always that nothing hrin contd shl render either of them the sd, *covenanting parties*, or his or her exs or ads liable to the paymt of any larger sum of moy than the value of the share of the sd trust premes & the income throf wch he or she [or his wife] has reced].”

Proviso
restrict-
ing
liability
of benefi-
ciaries.

of the costs & expses incurred by them in relation to the sd trust & this release.

IN WITNESS, &c.

VI.

RELEASE and GENERAL COVENANT of INDEMNITY to TRUSTEES of SETTLEMENT comprising PERSONALTY and REAL ESTATE conveyed in TRUST for SALE.

PARTIES, A., son, 1; B. & C., his wife, *daur*, 2; D. & E., *surving trees*, 3. *Recital of convce* ("hrinar called the convce") Recitals.
of *real este in trust for sale*, & *settlemt* ("hrinar called the Settle-
settlemt") of *even date on marre of F. & G. settlg* £—— — ment.
Annies & proceeds of sale of real este on wife & husbd successively
for life, with remr as wife should appt, with remr for chln equally
at twenty-one &c., & power of advancemt, if any, & containg covt
by L., wife's father, to pay gross sum on his death, with intt in
meantime to be held on similar trusts; powers to appt new trees;
AND WHAS the sd G. died on the —— day of —— witht havg
exercised the sd power of apptmt by the settlemt given to her
as afsd; *Payment of duties on death of G.*, p. 458, note:
Death of F., havg made a will apptg A. exor; Probate; Death of
AND WHAS there have been issue of the sd marre betn the sd F. & tenants
G. three chln & no more, namely, the sd A., who has attained for life.
the age of twenty-one yrs, the sd C., who intermarried with
the sd B. on the —— day of ——, & has since attained that Family.
age, & H., who attained the age of twenty-one yrs on the ——
day of ——; AND WHAS the sd L. died on, &c., in the lifetime Death of
of the sd G., & the sd sum of £—— by the settlemt covted wife's
to be pd by him as afsd was on the —— day of —— pd to father,
the sd trees & invested by them after paying thereout £—— for and pay-
succession duty & costs on the —— day of ——, in the pchase ment and
of —— debentures of £—— each of the —— Rly Co.; AND invest-
WHAS the intt payable durg the life of the sd L., on the sd ppal ment of
sum of £——, & all the intt payable thron after his death, was sum
duly pd by him or his exor, & was reced by the sd G.; AND WHAS secured
in the yr —— the sum of £——, pt of the sum of £—— —— by his
Annies comprised in the settlemt was, with the consent in cove-
writg of the sd F., sold by the sd trees, & the proceeds throf nant.
Advance-
ment of a
child.

applied for the advancement of the sd A. [& in commutation of the succession duty thron wch wd become payable on the death of the sd F.]; *Will of H., bequeathg her residuary este*, "wch included her share & intt under the settlemt," *to A. & C. equally, & apptg A. exor; Death of H. & probate; Deaths of I. & K., two of the trees, & apptmt of D. & E. trees in their place of the settlemt & deed of even date, & transfer of trust este; Death of M., the remaining origl tree; AND*

Real estate not sold. Conversion of stock by Act of Parliament. Shares in which estate divisible. Share of deceased child. Income. Payment of duties and costs

WHAS the whole of the real este conveyed by the convce in trust for sale as afsd has been retained unsold; AND WHAS the sd £—— Annies were in the yr 1888 converted as from the 5th day of April, 1903, by Act of Parliamt into £—— 2½ p.c. Consold Stk; AND WHAS under the trusts of the settlemt (as hrinbfe appears) upon the death of the sd F., the sd A. became entitled in posson to one eql third pt of the sd trust ppty (subjt to bringing into acct the sum of £—— applied for his advancement as afsd, & to the paymt of duty), & the sd C., or the sd B. in her right, became entitled in posson to another eql third pt throf (subjt to duty): AND WHAS the funl & testy expses & debts of the sd H. have been fully pd & satisfied, & by virtue of the bequests contd in her sd will the sd A. & the sd C. [or the sd B. in her right], are benefly entitled in eql shares to the one-third share of the sd H. in the sd trust ppty (subjt to succession duty, & subjt also to the paymt of the duties payable in respt throf on the death of the sd H.); AND WHAS all the dividends & rents of the sd trust ppty up to the death of the sd G., inclusive of the apportioned pt of the dividends & rents wch became due after her death, were duly pd to her or to the sd F. as her admor, & all dividends & rents throf subseqtly to such death & up to the death of the sd F. (inclusive of the apportioned pt of the dividends & rents accrug after his death) were duly pd to him or the sd A. as his exor, as the sd A. hby acknowes; AND WHAS the sum of £——, pt of the sd sum of £—— 2½ p.c. Consold Stk, has been sold by the sd D. & E., & the proceeds throf, togr with the dividends & rents, amtg to £——, wch have accrued on the sd trust ppty since the death of the sd F., have been applied in paymt of the duties payable in respt of the sd trust ppty on the death of the sd F., & the costs of & incidental to

the preparon & execution of this release or orwise relatg to the windg up of the sd trust ; AND WHAS all duties payable on the death of the sd H. have been duly pd ; AND WHAS the sd real este situate at — has been valued by — at the sum of £——, weh sum it has been agrd shl be taken as the value throf for the ppose of the division of the sd trust ppty ; AND WHAS the market value of the sum of £—— $2\frac{1}{2}$ p.c. Consold Stk (being the sum remaing after such sale as afsd), & of the sd £—— Rly Debentures at the price of the day is £—— & £—— resply ; AND WHAS it has been agrd that the sd real este & the sum of £—— $2\frac{1}{2}$ p.c. Consold Stk, weh togr amt in value to the sum of £—— (being the amt of the total share of the sd A. in the sd trust ppty after acctg for the sum of £—— applied for his advancemt as afsd), shl be appropriated to him, & that the sum of £—— like Stk, & the sd sum of £—— Rly Debentures, amtg togr in value to the sum of £—— (being the amt of the total share of the sd C. in the sd trust premes), shl be appropriated to her ; AND WHAS by a convce bearg even date herewith, & made, &c., the sd real este has been conveyed by the sd D. & E. with the concurrence of the sd B. & C. to the sd A. (a) ; AND WHAS the sd sum of £—— $2\frac{1}{2}$ p.c. Consold Stk has been transferred by the sd D. & E. to the sd A., & the sd sum of £—— like Stk & £—— Rly Debentures have been transferred by the sd D. & E. to the sd B., with the consent of the sd C., as they the sd A., B., & C. do hby acknowe ; AND WHAS, bfe the convce & transfers afsd were made, it was agrd that the release & indemnity hrinar contd shd be given & executed : NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows :—

Valuation of trust property.

Agreement for division of estate.

Conveyance of real estate to son. Transfer of stocks.

Agreement for release.

Witnesseth.

1. THE SD A. (as well in respt of his benefi intt as in his character of exor of the sd H. & F. resply), & the sd B. & C. do & each of them doth hby release & discharge the sd D. & E., & each of them, their, & each of their, exs & ads, & also the estes & effects of the sd I., K., & M. resply, from the sd respective

Release.

(a) The concurrence in the deed of appropriation of all the beneficiaries is advisable in order that it may appear on the face of the deed that the conveyance is made pursuant to a family arrangement for the division of the property, and to preclude all possibility of questions being raised subsequently as to the propriety of the transaction.

Form of appropriation.

As to the power of trustees to appropriate property *in specie*, and as to the stamp on the conveyance, see *post*, p. 833, note (a).

sums of £—— & £—— 2½ p.c. Consold Stk, & £—— Rly Deben-
tures so transferred to the sd A. & B. resply as afsd, & from the
sd real este & the moys to arise from the sale throf, & from all
actions, proceedings, claims, & demands whatsr, for or in respt
of the same resply, or the trust ppty comprised in or at any time
subjt to the trusts of the settlemt or the convce, or the dividends,
intt, rents, or annual produce throf, or anythg in anywise
relatg to the trusts of the settlemt or the convce, or the
premes (a) ; *Covt by A., B., & C. against incumbces*, p. 466.

Covenant
of indem-
nity (b).

2. THE SD A. & B. hby jointly & sevlly covt with the sd D.
& E., their exs & ads, & with each of them, his exs & ads, that
they the sd covtg pties resply will at all times hrafter effectually
keep indemnified the sd D. & E., & each of them, their & each
of their, exs & ads, against all actions, proceedings, claims, &
demands on the pt of any pson or psons whomsr, & from all
costs, damages, & expses in respt of the trust este & ppty
now or at any time comprised in or subjt to the trusts of the
settlemt, or the dividends, intt, rents, or annual produce throf,
or any pt throf resply, or anything done or omitted by the sd
D. & E., or the sd I., K., & M., or any of them, in the execution
of the trusts of the settlemt, or anything in anywise relatg to
the premes.

IN WITNESS, &c.

VII.

RELEASE to TRUSTEES of a MARRIAGE SETTLEMENT
on the FINAL DISTRIBUTION of the TRUST FUNDS,
the dealings with those FUNDS being SHOWN by a
SCHEDULE. VARIATIONS where an INDEMNITY is given.

Parties.

Recitals.
Settle-
ment.

PARTIES, A., “ & B., a daur, his wife,” 1 ; C. & D., *treas of B.’s*
settlemt, 2 ; E., a son, 3 ; F., a son, 4 ; G., *exor of last tenant*
for life, 5 ; K. & L., *treas of settlemt*, 6 : WHAS by a deed of
settlemt (hrinar called the settlemt) dated, &c., & made, &c.
(being the settlemt made on the marre shortly afterwards
solemnised betn the sd M. & N.), it was declared that the sd X.
& Y., or other the treas or tree for the time being of the settlemt

(a) For a fuller form of release, see the last Precedent.

(b) As to the insertion of a general covenant of indemnity, see *ante*,
p. 467, note (c).

shd after the sd marre either allow the stks, funds, & secs thrin mentd (the parlars whrof are specified in the schdle hto) to remain in their actual state of investmt, or shd at any time or times, with the consent of the sd M. & N., or of the survor of them, & after the death of such survor, at the discreon of the sd trees or tree for the time being, sell the same, but as to certain pts throf, wch were then reversionary or contingent, not until after the same shd have fallen into posson, & invest the proceeds in any of the secs thrin mentd, wch included among others the sevl secs into wch the investmts of the sd trust premes were from time to time transposed, as appears from the sd schdle hto, & shd, &c., *trusts to pay income to M. & N., successively for life, remr for their issue as they or survor shd appt, in default for chln at twenty-one, &c., & hotchpot, & (if any) advancemt clauses; Recitals as to issue of marre & marre of daur; Apptmt of K. & L. trees in place of X. & Y. on their retiremt, & transfer of trust estate; Apptmt by M. & N. of pt of trust funds to B. on her marre, & assnmt throf to C. & D., her trees; Death of M.; [Paymt of duties on death of M., p. 458, note.] Apptmt by N. after M.'s death to E.; Will of N. apptg G. exor, death & probate; [Payment of duties on death of N., p. 458, note];* AND WHAS the first pt of the schdle hto contains a full & parlar acct & statemt of the trust este & ppty origlly comprised in or subjt to the settlemt & of all sales & transposons of the investmt throf, & of all the rects, paymts, & disbursemts of the sd trees or tree for the time being, in respt of the capl of the sd trust este & premes, & also (since the death of the sd N.) in respt of the income throf: AND WHAS the second pt of the sd schdle shows the parlars of the trust este & ppty now remaing subjt to the trusts of the settlemt, & the mode in wch the same has been distributed; *Add recitals as to any matters requiring to be specially noticed;* AND WHAS the sd pties hto of the first five pts have carefully examined the accts contd in the sd schdle hto, & are satisfied therewith; AND WHAS all income payable to the sd M. durg his life, & since his death to the sd N., or to their respective exs in respt of the sd trust premes has been duly accted for & pd, as the sd G. doth hby acknowe; AND WHAS the sd K. & L. have, at the request of the sd sevl pties

Explan-
ation of
schedule.

Approval
of ac-
counts.

Applica-
tion of
income.

Agree-
ment for

distribu-
tion and
release.
Wit-
nessoth.

Release.

hto of the first four pts, made the sevl paymts & transfers mentd in the second pt of the sd schdle hto on an agrmt for havg such release as is hrinar contd (a); NOW THIS DEED WITNESSETH that in psuance of such agrmt, & in conson of the sd sevl paymts & transfers mentd in the second pt of the sd schdle havg been made as afsd & of the premes, They the sd sevl pties hto of the first five pts (b) accordg to their sevl & respective rights & intts, do, & each of them doth hby release the sd K. & L., & also the sd X. & Y., & each of them, their, & every of their exs, ads, estes & effects, from all actions, proceedings, claims & demands, in respt of the trust este & ppty comprised in or at any time subjt to the trusts of the settlemt or any pt throf, or of any of the acts, matters, & things mentd or implied in the sd schdle hto, or orwise in relation to the premes (c). In WITNESS, &c.

The Schdle above referred to.

VIII.

RELEASE to TRUSTEES of a WILL in respect of SETTLED STOCK SOLD and PAID at the request of the BENEFICIARIES to the TRUSTEES of a SETTLEMENT.

Recitals.
Sale of
stock and
payment.

PARTIES, A., 1; B., 2; C. & D., 3; E. & F., 4. WHAS the sd E. & F. as trees under the will of K., dated &c. & proved &c., recently sold £—— Stk standg in their names & held under the sd will on trust for paymt of the dividends throf to the

Short
clause of
release
and in-
demnity
com-
bined.

(a) The schedule will show what property is retained by the trustees to satisfy their costs, or an express recital as to this may be inserted as in Precedent V., or a covenant for indemnity may be used.

(b) As to the trustees of the daughter's settlement joining in the release, see *ante*, p. 466, note (d).

(c) The following is a very short form of release and indemnity combined :
“NOW THIS DEED WITNESSETH that in conson of the premes the sd beneficiaries do respby hby release & covt to keep indemnified the sd trees respby & their respective exs & ads from & against all claims, demands, actions, proceedings, costs, damages, & expses wch may or might be made or arise in relation to the sd trust premes or any pt throf or anything done or omitted by the sd trees in respt throf.”

sd A. durg his life, & subjt thereto on trust for the sd B. absolutely, & pd the net proceeds throf (amountg to £——) to the sd C. & D. as trees of a deed of asmnt &c., whereby the sd B. assned to the sd C. & D. his share of the ppty subjt to the trusts of the sd will, & such sale & paymt were made at the request of the sd A., B., C., & D. with the intent to extinguish all intt of the sd A. & B. in the same Stk or the proceeds throf under the sd will, on an agrmt that such release shd be executed as is hrinar contd : NOW THIS DEED made in psuance &c., & in conson of the premes WITNESSETH as follows :—

Wit-
nesseth.

1. THE SD A., B., C., & D. resply release the sd E. & F. & each of them from the sd Stk sold as afsd & the proceeds & income throf, & from all actions & proceedings by reason of such sale & paymt, or orwise in relation to the premes.

2. THE SD B., C., & D. hby jointly & sevlly covt with the sd E. & F. their exs & ads, & with each of them, his exs & ads, that they the sd B., C., & D. will, if & when any death duties shl become payable in respt of the sd sum of £—— Stk so sold by the sd E. & F. as afsd, pay & discharge the same, & will at all times keep the sd E. & F. resply & their respective exs & ads effectually indemnified against the same & every pt throf, & against all actions, proceedings, costs, charges, claims, & demands whatsr in respt throf (d).

IN WITNESS, &c.

IX.

DEED of RELEASE, CONFIRMATION, and INDEMNITY by the PARTIES INTERESTED under a WILL, in respect of the TRUSTEES having RETAINED part of the REAL ESTATE UNSOLD, and in respect of a SALE to a SON of the TESTATOR at a VALUATION, and RELEASE by the WIDOW of her LIFE INTEREST in the PURCHASE-MONEY to the SON.

PARTIES, A., widow, 1 ; B., C., D., & E., chl'n of A. (a), 2 ; the sd B., son, 3 ; L., M., & N., trees, 4. *Recite will containg residuary* Recitals.

(d) See *ante*, p. 457, note (c).

(a) As to married women, see *ante*, p. 458, note (a).

devise & bequest in trust for sale & conversion, & trust of proceeds for A. for life, remr to chln at twenty-one, &c. ; Death & probate ; State of family ; Testor's title to estate ; AND WHAS after the death of the sd testor it was considered that an immediate sale of the sd este was undesirable, & it was accordgly arranged, with the approbon & consent of all the sd pties hto of the first & second pts, that the same shd remain unsold, & shd be cultivated & kept up at the expse of the sd testor's este ; AND WHAS it has been lately agrd betn the sd trees & the sd B., with the approbon & consent of all the sd other pties hto of the first and second pts, that the sd este shd be sold to the sd B. for the sum of £——, being the sum at wch the same has been valued by X. & Y. ; AND WHAS the sd sale is intd to be forthwith carried into effect by a pper convce ; AND WHAS the sd A., at the reqt of the sd B., & in order to provide him with the necy capl for carrying on the cultivon of the sd este & his other requiremts, has agrd to release her life intt in the sd sum of £—— constitutg the pchase-moy of the sd este in mner hrinar mentd, to the intent that such sum may be forthwith pd or transferred by the sd trees to the sd B., in part satisfon of his share in the sd residy este, subjt to the deduction of the [death duties payable in respt throf, & the] costs of & incidental to this deed & the carrying out of the sd arrangemt, wch it has been agrd shl be pd throuth ; AND WHAS the sd pties hto of the first & second pts have resply agrd to execute such confirmon & release, & the same pties have resply agrd to enter into such covts of indemnity as are hrinar contd : NOW THIS DEED made in psuance, &c., & in conson of the premes WITNESSETH as follows :—

1. THE SD pties hto of the first & second pts, accordg to their sevl estes & intts, do resply hby ratify & confirm the sd sale or intd sale of the sd este to the sd B., & do hby authorise & empower the sd trees to carry such sale into effect, & do resply hby release & discharge the sd L., M., & N., & each of them, their & every of their exs & ads, from all claims, demands, actions, & proceedings, in respt of the sd este havg been retained unsold as afsd, or any loss arisg from such retention, or in respt of the sd sale of the sd este to the sd B.

2. EACH OF them the sd pties hto of the first & second pts hby covts with the sd L., M., & N. resply, & their respective exs & ads, that they the sd covtg pties resply & their resptve exs & ads will at all times hrafter keep the sd L., M., & N., &

That
estate has
been
retained
unsold.

Agree-
ment for
sale to
son.

Agree-
ment for
release of
life
estate.

Agree-
ment for
release,
&c., to
trustees.

Wit-
nesseth.

Release to
trustees.

Covenant
of indem-
nity.

each of them, & their & every of their exs & ads effectually indemnified against all actions, proceedings, claims, & demands on the pt of any pson or psons whomsr, & from all costs, damages, & expses for or in respt of the sd este havg been retained unsold as afsd, or in respt of the sd sale throf to the sd B., or in relation to any of the matters afsd.

3. THE SD A. hby releases & surrenders to the sd B. all the life este & intt of the sd A. in the sd sum of £—— arisg from the sd intd sale to the sd B., & the intt & income throf, to the intent that such sum shl forthwith, or as soon as circes will admit, be pd or transferred by the sd trees to the sd B., his exs, or ads, in pt satisfson of his share in the sd residy este, subjt to & after deduction & paymt throu of the duties payable in respt throf, & the costs hrinbfe mentd. IN WITNESS, &c. (c).

Release
of life
interest.

X.

RELEASE *and* INDEMNITY by BENEFICIARIES under a WILL to the EXECUTORS in respect of a payment made by way of COMPROMISE of a CLAIM against the ESTATE (a). SOME of the BENEFICIARIES being INFANTS who are made PARTIES, that they may execute when of age.

PARTIES, A. & B., adult beneficiaries, 1; C. & D., infant beneficiaries, 2; E. & F., exs, 3. Recitals as to compromise; AND WHAS the sd terms were arranged & the sd paymt made with the approbon of the sd pties hto of the first pt, who were consulted in the course of the sd negotiations, & who

Recitals.
Arrange-
ment.

(c) This deed requires an *ad valorem* stamp on the value of the life estate of A.: Fin. (1909-10) Act, 1910, s. 74. Stamp

(a) The power of personal representatives and trustees to compromise is much wider under s. 15 of the T. Act, 1925, than under s. 21 of the repealed T. Act, 1893. The personal representatives and trustees must exercise their discretion as to the desirability or otherwise of effecting the compromise but if they do so in good faith are not responsible for any loss occasioned by it. The precedent in the text is retained for use in those cases where an express release is desired.

Infants
made
parties.

entirely concurred in the expediency of carrying out the sd terms & recommended the adoption throf, & agrd in respt throf to execute such release & covt of indemnity as is hrinar contd; AND WHAS the names of the sd, C. & D., have been inserted as pties to this deed of the second pt to the intent that they may, if they shl resply think fit, execute the same on their resply attaing majority, but the effect of the execution of this deed by the sd adult pties hto or any of them as bindg each such respective party shl not in any way be prejudiced by the non-execution of this deed by the sd C. & D.; or either of them or by any other pson hrin named as a party to this deed (c): NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows:—

Wit-
nesseth.

Release.

1. THE SD sevl psons hrinbfe named as pties of the first & second pts, do & each of them doth hby release the sd pties hto of the third pt, & each of them, their & each of their exs & ads, estes & effects from all actions, suits, proceedings, accts, claims, & demands for or in respt of the sd arrangemt by way of compromise or of the paymt of the sd sum of £—— as afsd, or in any mner relatg thereto or to the premes.

Covenant
of in-
demnity.

2. EACH OF them the sd sevl psons hrinbfe named as pties hto of the first & second pts hby covts with the sd pties hto of the third pt, & each of them, their & each of their exs & ads, that they the sd sevl covtg pties or their respective exs or ads, or some or one of them, will at all times hrafter keep indemnified the sd pties hto of the third pt, & each of them, their & each of their exs & ads, estes & effects against all actions, proceedings, accts, claims, & demands incurred or sustained by

Effect of
non-exe-
cution by
some of
parties.

(c) Unless otherwise provided, the non-execution of a deed, or the execution without binding effect, by parties whose execution was contemplated would relieve the parties executing from their obligation: *Peto v. Peto*, 16 Sim. 590; *Bolitho v. Hillyar*, 34 Beav. 180; and see 2 White & T. L. C. notes to *Stapilton v. Stapilton*; 30 Sol. J. 668. Execution in a wrong name does not relieve the party so executing from any liability under the deed, nor if he uses the name of another person can he saddle that other person with liability: *Fung Ping Shan v. Tong Shan*, [1918] A. C. 403. Cf. *Re De Leeuw*, [1922] 2 Ch. 540. Where persons claim under a deed they cannot refuse to abide by all the provisions of it: Litt. s. 374; *R. v. Houghton-le-Spring*, 2 B. & Ald. 375; *Burnett v. Lynch*, 5 B. & C. 589; *Cheesebrough v. Wright*, 28 Beav. 283; cf. *Re Brooksbank*, 34 Ch. D. 163; *Re Weston*, [1900] 2 Ch. 164; *Pitman v. Crum Ewing*, [1911] A. C. 217. Where the validity of a deed depends on its being registered, execution after registration is not such an alteration of the deed as to render it invalid: *Re Batten*, 22 Q. B. D. 685.

reason of the adoption by them the sd pties hto of the third part of the sd arrangemt by way of compromise, or by reason of the paymt of the sd sum of £—— as afsd, or in any mner relatg thereto, or to the premes, & against all damages, losses, costs, & expses whatsr, consequential upon or incidental to any such action, proceeding, acct, claim, or demand.

IN WITNESS, &c.

XI.

RELEASE of GENERAL TESTAMENTARY POWER of APPOINTMENT (d).

THIS RELEASE made by A., of, &c., the wife of B.
Recite will of X. bequeathg legacy in trust for A. for life, remr to her issue, in default of issue as she may by will appt, in default for her exs & ads. That she has never had any issue & is past age of child-bearg : AND WHAS the sd A. has determined to release the power Recitals

(d) As to the release of powers, see L. P. Act, 1925, s. 155, which applies to powers created or arising either before or after the 1st of January, 1926, s. 160; Farwell, 3rd ed., pp. 12 *et seq.* Independently of the Act, a general testamentary power can be released by deed: *Walmsley v. Jowett*, 23 L. J. Ch. 425. As to the release of a special power, see note to next Precedent. Release of powers.

Where a married woman is entitled to a life interest and a reversion, both for her separate use, only divided by a general power of appointment vested in her, she can release her power and thus become absolutely entitled to the property in possession: *Re Davenport*, [1895] 1 Ch. 361.

The donee of a limited power of appointment can release it for his own benefit: *Re Some*, [1896] 1 Ch. 250; though if an appointment has been made and a power of revocation retained, the donee of the power cannot revoke the appointment with the avowed object of obtaining a benefit by the revocation: *Re Jones' Settlement*, [1915] 1 Ch. 373; but where a married woman tenant for life with a restraint on anticipation releases such a power, the Court will exercise its discretion as to dispensing with the restraint so as to enable her to deal with the property: *Re Little*, 40 Ch. D. 418. As to a release by the trustee in bankruptcy of the donee, see *Re Rose*, [1904] 2 Ch. 348; [1905] 1 Ch. 94. A power coupled with a duty cannot be released: see *Re Eyre* (1883), 49 L. T. 259; *Weller v. Kerr*, L. R. 1 Sc. App. 11; *Saul v. Pattenson* (1886), 58 L. J. Ch. 831.

The donee of a general testamentary power of appointment can covenant that he will not exercise the power in a particular manner, and when he has done so the power can only be exercised subject to the fetter imposed by the covenant: *Re Evered*, [1910] 2 Ch. 147, discussed 54 Sol. J., 558. Secus in the case of a special power: *Re Cooke*, [1922] 1 Ch. 292.

Wit-
nesseth.

Release.

of apptmt so vested in her by the sd will of the sd X. over the sd legacy or sum of £—— in mner hrinar appearg; NOW THIS DEED WITNESSETH that in psuance of such determination she the sd A. hby releases & for ever discharges the sd legacy or sum of £—— from the power by the sd will of the sd X. given to her to appt the same by will, to the intent that the sd legacy or sum of £—— may henceforth be absolutely discharged from the sd power of apptmt, & that she the sd A. may be absolutely precluded from exercisg the same power, & that the sd legacy or sum may devolve upon & become vested in the sd A., her exs & ads (a) accordg to the provons in the sd will contd in default of apptmt throf. IN WITNESS, &c.

XII.

RELEASE of POWERS of APPOINTMENT contained in a MARRIAGE SETTLEMENT in favour of the ISSUE of the MARRIAGE.

THIS RELEASE made by us, A., of, &c., & B., his wife (b), WITNESSETH that for divers good causes & consons we do & each of us doth hby release the ppty now subjt to the trusts declared by a settlemt [trust instrumt], dated, &c., being the settlemt made on our marre & the ppty wch may by means of any change of investmt or orwise from time to time represent the same, from the powers of apptmt vested in us or the survor of us by the sd settlemt in favour of the chln & more remote issue of the sd marre, & we declare that we have not exercised the power of apptmt so vested in us (c). IN WITNESS, &c.

(a) A. is absolutely entitled under this trust : Norton on Deeds, 405. The words "her exs & ads" are superfluous.

(b) The married woman can release her power under the L. P. Act, 1925, s. 155 : *Re Chisholm*, [1901] 2 Ch. 82. Independently of the Act a special power whether exercisable by deed or will (*Smith v. Death*, 5 Madd. 371; *Smith v. Houlton*, 26 Beav. 482; *Re Radcliffe*, [1892] 1 Ch. 227; *Re Somes*, [1896] 1 Ch. 250) or by will only (*Horner v. Swann*, Turn. & R. 430) can be released.

(c) See *Re Wyllly*, 28 Beav. 458; *Re Cull*, L. R. 20 Eq. 561.

XIII.

RELEASE of a POWER to JOINTURE (d).

PARTIES, A., *tenant for life & donee of power*, 1; B., *reversioner*, 2. WHAS under or by virtue of a settlemt [trust instrumnt], dated, &c., & made, &c., & of a disentailing assurance dated, &c., & made, &c., & of the events & matters recited, mentd or referred to in the sd last-mentd deed, the sd A. is tenant for life of certain estes & ppty situate in the parishes of —, in the county of —, with remr to the sd B. in fee simple, subjt to a power by the sd settlemt [trust instrumnt] given or reserved to the sd A. by deed or will to charge the sd ppty or any pt throf, with a rent-charge not exceedg £— p.a. in favour of any wife who might survive him, durg her life, by way of jointure, [& to limit or create the usual powers & remedies for securg the same]; AND WHAS it has been agrd betn the sd A. & B. that in conson of, &c., *state conson*, the sd A. shd release the sd power of jointurg in maner hrinar appareg: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the premes the sd A. hby absolutely releases unto the sd B. the sd power of jointuring by the sd settlemt [trust instrumnt] given or reserved to the sd A. as afsd, to the intent that the same shl henceforth be absolutely extinguished & cease to be exercisable. IN WITNESS, &c.

Recitals.

Settle-
ment and
disentail-
ing deed.Agree-
ment.Wit-
nesseth.

Release.

XIV.

RELEASE by way of COVENANT NOT TO SUE, and COMPROMISE, between DEBTOR and CREDITOR, with PROVISIONS as to JUDGMENT being given by CONSENT as SECURITY for PAYMENT by INSTALMENTS, and clause RESERVING rights against SURETIES (a).

PARTIES, A., 1; B., 2. WHAS divers pecuniary transons have taken place betn the pties hto in respt whrof the sd B. is

Recita's.

(d) See *ante*, p. 480, note (b).

(a) As to the release taking the form of a covenant not to sue in order to preclude any question as to the debt being extinguished, where it is to revive in case of default against the principal debtor and is to remain

Covenant
not to
sue.

Indebtedness.

Agreement for compromise.

Agreement for order to enter up judgment.

Sureties.

Witnesseth.

Acceptance.

Covenant not to sue.

Reservation of rights against sureties.
Order by consent to enter judgment.

indebted to the sd A. (as is admitted) to the amt of £—— on balance of acct ; AND WHAS the sd B., being wholly unable to pay the sd debt in full, it has been agrd that he shl pay to the sd A. the sum of £—— on the execution of this deed in pt satisfson throf, & that he shl also pay to him a further sum of £—— by instalmts of £—— p.a. for a period of —— yrs as hrinar provd, & that the sd A. shl accept such paymts by way of compromise & in satisfson of all claims against the sd B., subjt as hrinar provd : AND WHAS it was a further pt of the sd arrangemt for a compromise that an order shd be made by consent in an action in the King's Bench Division of the High Court of Justice in wch the sd A. is pltf & the sd B. is deft, to enter up judgmt in favour of the sd A. against the sd B. for the sum of £——, but that such judgmt shl not be entered up unless default shl be made in paymt of the sd annual sum as hrinar provd ; AND WHAS other psons or companies are or may be liable to the sd A. on bills, notes, bonds, or orwise, as sureties, guarantors, or joint debtors, or orwise, for the paymt of portions of the sd aggregate debt of £—— or the intt thron, & it is not intd that this deed shl prejudice the rights of the sd A., his exors or ads, against such other psons or companies or any of them : NOW THIS DEED made in conson of the sum of £—— now pd by the sd B. to the sd A. (the rect whrof is hby acknowded), & of the covt of the sd B. hrinar contd for paymt of the sd annual sum, & of the premes, WITNESSETH as follows :—

1. THE SD A. hby covts with the sd B. that he the sd A. will accept the sd sum of £—— & the annual sum hrinar covted to be pd (subjt as hrinar mentd), in full discharge & satisfson of all claims & demands wch the sd A. now has against the sd B. in respt of the transactions & matters afsd, or on any other acct whatever ; AND further, that unless default shl be made in paymt of the sd annual sum as hrinar provd, he the sd A. will not at any time hrafter bring or take any action

in force against sureties, and as to reserving rights against sureties, see 11 Encycl. Prec. 449 ; see also generally as to the law of principal and surety, 2 White & T. L. C., notes to *Rees v. Berrington* ; Goodeve P. P., 5th ed., 173 *et seq.* ; *Perry v. National Provincial Bank of England*, [1910] 1 Ch. 464.

An order by consent to enter up judgment must be filed within twenty-one days under the Debtors Act, 1869, s. 27, to render it valid against the creditors of the debtor : *Gowan v. Wright*, 18 Q. B. D. 201.

or proceeding whatsr against the sd B., his exs or ads, in respt of any such claims or demands as afsd, & that except in case of such default as afsd the sd A., his exs or ads will not enter up judgmt upon or take any proceedings for enforeg the sd order other than filing the same.

2. THE SD B. hby covts with the sd A., *covt for paymt of annual sum*; PROVD ALWAYS & it is hby agrd that in case any [qtrly] instalmt of the sd annual sum shl at any time be in arrear & unpd for thirty days after the same shl have become due (in weh respt time shl be of the essence of this contract), then although the sd A., his exs or ads, shl have accepted paymt of any previous instalmt of the sd annuity after the expiron of such thirty days, all the rights of the sd A., his exors or ads, against the sd B., his exs or ads, in respt of his now existg indebtedness, shl revive to the full extent, & he & they shl be thrupon entitled notwithstdg the covt on his pt hrinbfe contd, to enter up judgmt for the sd sum of £——, & issue execution upon & take all necy proceedings for enforeg the same, after givg credit for the sd sum of £—— pd on the execution hrof & any paymts weh may have been made in respt of the sd annual sum.

Covenant
to pay
annuity.
Provision
for
default.

3. PROVD THAT nothg hrin contd shl in anywise prejudice or affect any rights or remedies weh the sd A., his exs or ads, has or may have against any pson or psons or company who may be liable as surety, guarantor, joint debtor, or orwise for the paymt of any moys formg pt of the aggregate debt owing by the sd B. to the sd A. as afsd under any bill, note, bond, or other instrumt or orwise howsr.

Reserva-
tion of
rights
against
sureties.

IN WITNESS, &c.

XV.

RELEASE *by CREDITORS to DEBTOR under a COMPOSITION effected WITHOUT RECOURSE to the BANKRUPTCY Acts (a).*

THIS RELEASE, made, &c., BETN the sevl psons whose names & descriptions are contd in the schdle hto (hrinar

Parties.

(a) This deed (i.) will not bind dissentient creditors, for which purpose proceedings must be taken under the Bankruptcy Acts; (ii.) is subject to an implied condition (if not expressed as in this Precedent) that it shall not take effect if bankruptcy supervenes: *Re Stephenson*, 20 Q. B. D.

Composi-
tion
deeds
with
creditors.

called the credors) of the one pt, & A., of, &c., of the other pt :

Recitals. WHAS the sd A. is indebted to each of the credors in the sum written opposite to his or her name in the schdle hto ; AND WHAS the credors have agrd to accept a composon of — shillings in the pound in full discharge of their sd debts ; NOW

Wit- THIS DEED WITNESSETH, & it is hby mutually agrd & nessedh. declared as follows :—

Composi- 1. THE SD A. shl on or bfe the — day of — next pay to tion and release. each of the creditors who shl execute this deed bfe that day a composon of — shillings in the pound on his or her sd debt, wch they hby agree to accept in full satisfon & discharge of their sd respective debts ; And in case such composon shl be duly pd, each of them, the credors, doth hby release the sd A., his exs & ads, este & effects from his or her debt, & doth agree that such release shl be bindg & effectual although some of the credors of the sd A. may not execute this deed (b), & although the credors who shl not execute the same or any of them shl receive paymt in full (c).

Proviso 2. IF THE sd A. shl bfe the — day of — have a receivg in event of bank- order in bkptcy made agst him, or if he shl not on or bfe the sd ruptcy.

540; (iii.) must be registered under the Deeds of Arrangement Act, 1914, s. 2, or will be void; (iv.) must receive the assent of a majority in number and value of the creditors (as to the method of determining this majority, see *Re Wilson*, [1916] 1 K. B. 382) before or within 21 days after registration, or within such extended time as the Court may allow, or will be void: Deeds of Arrangement Act, 1914, s. 3 (1); and (v.) must be registered and re-registered every five years under the Land Charges Act, 1925, s. 8, to be valid against purchasers of land in whose favour deeds of arrangement whenever made are declared by s. 9 of the Act to be void if unregistered. Execution by creditors after registration does not affect the validity of the registration, nor of the deed itself: see *Re Batten*, 22 Q. B. D. 685. A deed of arrangement for the benefit of particular creditors, as distinguished from creditors generally (which expression is defined in s. 30 (1) of the Act of 1914), if made for the benefit of any three or more creditors, must be registered as if it were for the benefit of creditors generally, although it does not require the assent of a majority of all the creditors; see ss. 1 and 3 of the Act.

The deed can be executed by a properly constituted attorney, but the affidavit required by s. 5 (1) of the Act must be sworn by the debtor personally: *Re Wilson*, *sup*.

(b) See *ante*, p. 478, note (c).

(c) As to the impropriety of conferring upon the trustee of a deed of assignment for the benefit of creditors express power to pay any non-consenting creditor in full, see *Re Brindley*, [1906] 1 K. B. 377, *per* Cozens-Hardy, L.J., at p. 388.

— day of — pay to each of the credors who shl execute this deed bfe that day the sd composon of — shillings in the pound on his or her debt as hrinbfe is provd, then this deed shl be void.

IN WITNESS, &c.

The Schdle above referred to.

Name of Creditor.	Address, &c.	Debt.	Amount of composition.	Signature and seal of Creditor.	Witness to execution by Creditor.

XVI.

MUTUAL RELEASE *by* THREE PERSONS (a).

PARTIES, A., 1 ; B., 2 ; C., 3. WITNESSETH that every one & every two of them, the sd A., B., & C., doth & do hby release the others & each of the others of them, their & his exs, ads, & assns, & their & his estes & effects, from all sums of moy, accts, contracts, agrmts, covts, bonds, actions, proceedings, claims, & demands whatsr, wch any one or any two of them the sd A., B., & C. now has or have, or at any time htofore has or have had agst the others or either of the others of them, for or by reason or in respt of any act, matter, cause, or thing whatsr, up to the day of the date of this deed. IN WITNESS, &c.

(a) A release without recitals is limited to the matters which the parties had in contemplation at the time when the release was given : *L. & S. W. Rly Co. v. Blackmore*, L. R. 4 H. L. at p. 623 ; *Re Joint Stock, &c., Corpn.*, 56 Sol. J. 272. Norton on Deeds, 192. It is therefore desirable to show by recitals what these matters are.

Omission of recitals in release.

SEPARATION DEEDS

I.

SEPARATION DEED *between* HUSBAND *and* WIFE containing VARIOUS ALTERNATIVE PROVISIONS (b).

Recitals.
Agree-
ment for
separa-
tion.

THIS DEED OF SEPARATION made betn A., *husbd*, 1 ; B., *wife*, 2 ; C. & D., *tees* (hrinar called the trees), 3 : WHAS unhappy differences have arisen betn the sd A. & B., by reason whrof they have agrd [by mutual consent, but at the reqt of the sd A.] to live separate & apart from each other for the

Separa-
tion
deeds.

(b) As to separation deeds generally, see 5 Dav. Prec., 2nd ed., pt. 2, pp. 667 *et seq.* ; Chitty on Contracts, 17th ed., p. 267 *et seq.* ; Vaizey on Settlements, chap. 18 ; 1 White & T. L. C., notes to *Stapilton v. Stapilton* ; Lush, 3rd ed., 453 *et seq.* This Precedent contains various alternative provisions adapted to different cases. As to the introduction of trustees, see note (b) on next page. A deed of this nature can be varied under s. 192 of the Supreme Court of Judicature (Consolidation) Act, 1925, after a decree for divorce or nullity has been pronounced : and see under the old law : *Worsley v. Worsley*, L. R. 1 P. 648 ; *Jump v. Jump*, 8 P. D. 159 ; *Nepean v. Nepean*, [1925] P. 97. But a voluntary settlement made by an unmarried person though containing a power to appoint an interest to a spouse subsequently taken is not within the section : *Hargreaves v. Hargreaves*, [1926] P. 42.

After some difference of judicial opinion, it was decided in *Wilson v. Wilson*, 1 H. L. C. 538, that a Court of Equity could grant specific performance of a separation deed, a decision followed in *Hart v. Hart*, 18 Ch. D. 671, and could restrain a breach of its provisions by injunction ; *Besant v. Wood*, 12 Ch. D. 605 ; *Hart v. Hart*, *sup.* An agreement, whether made by deed or not, for future separation is void ; *Westmeath v. Westmeath*, 1 Dow. & Cl. 519 ; *Westmeath v. Salisbury*, 5 Bligh (N.S.) 339 ; *Hindley v. Westmeath*, 6 B. & C. 200 ; *H. v. W.*, 3 K. & J., 382. But a deed of reconciliation the object of which is to bring together spouses living apart at the time of its execution may contain a provision for future separation : *Re Meyrick's Settlement*, [1921] 1 Ch. 311. A separation deed is void unless followed immediately by actual separation : *Durant v. Titley*, 7 Price, 577 ; *Bindley v. Mulloney*, L. R. 7 Eq. 343 ; and is rendered void by a renewal of cohabitation : *Westmeath v. Salisbury*, *sup.* ; *Durant v. Titley*, *sup.* ; *Nicol v. Nicol*, 31 Ch. D. 524 ; but where the deed contains provisions not within the purview of a separation deed, such as provisions for the children to take effect after the death of the husband and wife, it may remain in force as a settlement : *Ruffles v.*

future, & to enter into the arrangemt hrinar contd : AND WHAS the sd A. has issue by the sd B. — chln & no more, namely, *state names & ages of the chln* ; [AND WHAS the sd B. [or the sd A. in her right] is entitled to the real & leasehd ppty hrinar described, wch it has been agrd shal be grted & assned in mner hrinar expressed] (a) ; AND WHAS the trees have at the reqt of the sd B. agrd to act as trees for the ppose of the arrangemt hby made & also to enter into the covts & obligons hrinar contd : NOW THIS DEED made in psuance of the sd agrmt & for the consons hrin appearg WITNESSETH, & the sd A. & B. (b) hereby mutually covt with each other & separately

Children.

Wife's title to realty and leaseholds.

Agreement by trustees to join.

Witnesseth.

Alston, L. R. 19 Eq. 539; *Re Spark*, [1904] 1 Ch. 451, compromised on appeal, [1904] 2 Ch. 121. On reconciliation a contract may be made that some of the provisions of the deed shall remain in force notwithstanding the reconciliation: *Webster v. Webster*, 4 De G. M. & G. 437; or that if the husband so misconducts himself as to entitle the wife to a separation order, he shall make a payment to her: *Harrison v. Harrison*, [1910] 1 K. B. 35.

A covenant in a separation deed to renounce the right of compelling cohabitation is a valuable consideration: *Re Weston*, [1900] 2 Ch. at p. 173; and therefore the deed, if made in good faith, falls within the exception to transactions operating as voluntary dispositions mentioned in s. 74 (5) of the Fin. (1909-10) Act, 1910, and does not require an *ad valorem* stamp under that section. It will, however, require a 10s. deed stamp as a separation deed, and an *ad valorem* stamp as a bond, if the husband covenants to pay an annuity: *Lewis v. I. R. Commrs.*, [1898] 2 Q. B. 290, or as a settlement, if he covenants to pay a gross sum to the trustees. As regards the covenant to pay a periodical sum, the stamp can it seems be reduced by making the covenant for payment of a weekly sum instead of an annuity: *Clifford v. I. R. Commrs.*, [1896] 2 Q. B. 187; *Jackson v. I. R. Commrs.*, 87 L. T. 269; but this may be found inconvenient in practice: see *post*, p. 496, note (b).

(a) See *post*, p. 491, note (e).

(b) Under the law prior to 1883, it was necessary that the covenants of the husband and wife for each other's benefit should be entered into with trustees, and the wife's covenants had no legal force except as binding her separate estate in equity, and except as to the covenant not to sue for a divorce, &c.; but under the M. W. P. Act, 1882, s. 1, every married woman may now contract as a *feme sole*, and this enables her to enter into contracts with her husband as well as third parties: see ss. 12 and 13; *Butler v. Butler*, 16 Q. B. D. 374. It therefore seems proper that the husband and wife should each covenant with the other as well as with the trustees; and as to the wife's power to agree without a trustee, see *McGregor v. McGregor*, 21 Q. B. D. 424; Lush, 3rd ed., 492; *Sweet v. Sweet*, [1895] 1 Q. B. 12. But the intervention of trustees, though not legally necessary, will be practically desirable in most cases. As to the effect of the wife's contracts, see the Act of 1882, s. 1, as amended by the M. W. P. Act, 1893, s. 1; *Paquin, Ltd. v. Beauclerk*, [1906] A. C. 148.

Stamp.

Covenants by wife.

with the trees, And the trees resply, so far as the agrmts & provons hrinar contd are or ought to be pformed or observed by the sd B. or the trees or their respective exs or ads, or any of them, hby covt with the sd A. in mner followg, that is to say :—

Liberty
to wife
to live
apart
from
husband.

1. THE SD B. may at all times hrafter live separate & apart from the sd A., & free from his marital control & authority, as if she were sole & unmarried, & may reside from time to time at such place [& carry on such trade, business, or occupon], as she may think pper, witht any interfere whatever on the pt of the sd A.

Husband
and wife
not to
molest,
&c., each
other (d).

2. NEITHER OF THEM, the sd A. & B., shl directly or indirectly molest the other of them [or any member or members of his or her family], or any pson or psons with whom he or she may reside, [or his [or her] customers, or, “employer”].

Not to
take pro-
ceedings
for resti-
tution of
conjugal
rights or
a divorce,
&c. (e).
Molesta-
tion.

3. NEITHER OF THEM the sd A. & B. shl require or compel or endeavour to compel the other of them to cohabit or dwell with him or her by any legal proceedings for restiton of conjugal rights or orwise howsr, or take any proceedings against the other of them to obtain a divorce or judicial separon in respt of any misconduct wch has htofore taken place or is alleged to have htofore taken place on the pt of the other of them (f).

Covenant
not to
sue for
divorce.

(d) Any act intended to, and which does, in fact, annoy, is a breach of this covenant: *Thomas v. Everard*, 6 H. & N. 448; *Fearon v. Aylesford*, 14 Q.B.D. 792; *Hunt v. Hunt*, [1897] 2 Q. B. 304, 547.

(e) Such a covenant to be a bar to a suit must be pleaded by the respondent: *Williams v. Williams*, [1921] P. 131; but if pleaded is a bar: *Marshall v. Marshall*, 5 P. D. 19; *Clark v. Clark*, 10 P. D. 188; *Aldridge v. Aldridge*, 13 P. D. 210 (but cf. *Cahill v. Cahill*, 8 App. Cas. 420), unless the covenantee has repudiated the obligations on his or her part to be performed under the deed: *Kennedy v. Kennedy*, [1907] P. 49; *Balcombe v. Balcombe*, [1908] P. 176; and see *Smith v. Smith*, [1915] P. 288; or by reason of bankruptcy an action upon the deed cannot be maintained: *McQuiban v. McQuiban*, [1913] P. 208; and is necessary in order to bar a suit: *Moore v. Moore*, 12 P. D. 193; but it does not amount to condonation, so as to prevent previous misconduct being pleaded in answer to a suit for divorce in respect of misconduct by the other party occurring after the date of the deed: *Gooch v. Gooch*, [1893] P. 99. See the full form of clause expressly condoning prior misconduct in *Rose v. Rose*, 7 P. D. 225. The deed only ceases to bar a suit if both parties treat it as a nullity, and thereby remit themselves to their original position: *Roe v. Roe*, [1916] P. 163. A mere agreement to live separately which does not contain a covenant not to sue precludes the Court from granting a restitution order: *Walter v. Walter*, [1921] P. 302.

(f) This does not bar a suit for judicial separation in respect of acts

4. THE SD A. shl, durg the joint lives of himself (g) & the sd B., if the sd B. [shl remain chaste (a) &] shl continue to pform & observe the stipulons hrin contd & on her pt to be pformed or observed, pay to the trees the clear annual sum (b) of £——, in trust for the sd B. as her separate este, & in the

Husband
to pay
annuity
to trus-
tees for
wife.

subsequently committed: *Kunski v. Kunski*, 23 T. L. R. 615. Where there is a covenant not to sue in respect of past misconduct but with a proviso that in the event of a separation order being obtained for subsequent misconduct the covenant should be void, a divorce decree can be pronounced in respect of misconduct after the date of the deed coupled with misconduct within the terms of the avoided covenant: *Thompson v. Thompson*, [1916] P. 165; *Lister v. Lister*, [1922] P. 227.

(g) A covenant to pay during the life of the wife only if she should so long continue to live separate and apart, has been construed as a covenant to pay during the joint lives of husband and wife in *Re Gilling*, 74 L. J. Ch. 335.

(a) In the absence of such a provision, the husband would be liable to continue the annuity, notwithstanding the subsequent adultery of the wife: *Sweet v. Sweet*, [1895] 1 Q. B. 12; and see *Wasteney v. Wasteney*, [1900] A. C. 446. This has been held not to be a usual provision in a separation deed: *Hart v. Hart*, 18 Ch. D. 670; see also as to the construction of such a covenant, *Stogdon v. Lee*, [1891] 1 Q. B. 661. A covenant in general terms may be controlled by a recital that the annuity is to be paid only during chastity: *Crouch v. Crouch*, [1912] 1 K. B. 378. As to the effect of the covenant on the right to alimony or an allowance pending or after a suit for divorce, see *Powell v. Powell*, L. R. 3 P. 186; *Benyon v. Benyon*, 1 P. D. 447; *Morrall v. Morrall*, 6 P. D. 98; *Wood v. Wood*, 57 L. J. Ch. 1; *Barry v. Barry*, [1901] P. 87; and as to proof in bankruptcy under such a covenant, see *Re Wood*, L. R. 9 Ch. 670; *Ex p. Neal*, 14 Ch. D. 579, *Victor v. Victor*, [1912] 1 K. B. 247. Where the parties were living apart under a separation deed, the refusal of the husband to resume cohabitation upon the offer of the wife was held not to constitute desertion, so as to entitle her to an order for maintenance under the Married Women (Maintenance in case of Desertion) Act, 1886, s. 1; and now under the Summary Jurisdiction (Married Women) Act, 1895; *R. v. Leresche*, [1891] 2 Q. B. 418.

Annuity
to wife.

(b) See *post*, clauses 16 and 17, and *ante*, p. 487, note on stamp. The husband may deduct income tax: *Re Barry*, [1906] 2 Ch. 358; but if he omits to do so he cannot recover the amount of it from the wife: *Ord v. Ord*, [1923] 2 K. B. 432. If it is desired that the annuity should be paid free of income tax say "shall in every year during the joint lives"

etc. and continue "pay to the trustees such a sum as after the deduction of income tax at the standard rate for the time being in force shall leave a clear sum of £——." See *Burroughes v. Abbott*, [1922] 1 Ch. 86, and *ante*, p. 17. A collateral agreement to pay an additional sum by reference to the amount deducted for tax from the principal sum agreed to be paid, which additional sum is itself liable to suffer deduction of tax, is not void under the Rules of the Income Tax Act, 1918: *Re Gordon's Settlement*, [1924] 1 Ch. 146. As to the effect of a subsequent decree of divorce or judicial separation on this covenant, see *Bishop v. Bishop*, [1897] P. 138, discussed 41 Sol. J. 449.

event of the sd B. surviving the sd A. & not havg incurred a forfeiture of the sd annuity in his lifetime, the same shl continue to be pd by his repves durg the remr of the life of the sd B. The sd annuity shl be pd in advance (c) by eql qtrly paymts on the usual qtr days, the first paymt to be made on the — day of — next, but no allowce or return of moy shl be made in respt of anything weh may have been once pd under the psnt clause if the sd annual sum shl cease on any other day than one of the sd qtrly days, & the sd B. shl not have power durg her coverture to anticipate the same (d).

Covenant
by hus-
band to
pay sum
on de-
mand
to the
trustees
with
interim
interest.

[5. (i.) THE SD A. hby covts with the trees to pay to them on demand the sum of £—— with intt thron until paymt at the rate of £—— p.c. p.a. from the date of this deed & until such demand shl be made & complied with to pay to the trees in pt paymt of such intt, intt at the rate afsd by eql quarterly payments on the —, *specify days*, in every yr on the ppal moys for the time being remaining due on the covt of the sd A.

(ii.) The trees shl invest any ppal moys pd to them under the covt of the sd A. in or upon, *continue investmt clause*, ff. 2 or 3, pp. 537, 539, & may at their discreon transpose any such investmts into others of any nature hby authorised.

(iii.) The trees shl pay the income of the sd investmts & also any intt received by them under the covt of the sd A. to the sd B. during the joint lives of the sd A. & B. witht power of antieipon.

(iv.) After the death of either of them the sd A. & B. the trees shl stand possessed of the sd investmts & of any ppal moys seed by the covt of the sd A. & not pd in trust for the survor of the sd A. & B., Provd that the sd B. shl not have power to dispose of such reversionary intt by way of antieipon.

(v.) The trees shl not require paymt of the sd ppal sum or any pt throf if & so long as the sd A. shl pay the intt thron or on the unpaid pt throf within fourteen days after the same shl become payable.]

Wife to
maintain
herself.

6. THE SD B. shl, out of the provon made for her by this deed or orwise, provide & pay for all such neey & other board,

(c) On the death of the wife no question as to apportionment arises if the annuity is payable in advance: *Trevalion v. Anderton*, 66 L. J. Q. B. 489.

(d) As to the efficacy of the restraint, see *Macnaghten v. Paterson*, [1907] A. C. 483.

lodgg, clothg [ornamts, medical attendee, comforts, recreation], & things whatsr as she may now or hrafter require or obtain, & shl in all respts support & maintain herself.

7. ALL THE wearg apparel & psonal ornamts of the sd B., & all movable psonal ppty belongg to the sd A. now in her posson, shl belong to the sd B. as her separate este independently of the sd A.

[8. THE SD B. with the concurrence of the sd A. hereby grts & the sd A. hby grts & confirms unto the sd B., *Parcels*, Vol. I., pp. 480 *et seq.*: To HOLD the same unto the sd B. in fee simple (*f*) as pt of her separate este independently of the sd A.; *add if necessary, in a separate claim, an assignmt by the husband (a) of the wife's leasehds & choses in action not reduced into possession to the wife* "as her separate este independently of the sd A."]

9. ON THE death of the sd B. in the lifetime of the sd A., all her septe este, whether real or psonal, wch she shl not have disposed of in her lifetime, or by will, shl (subjt to her debts

Wearing apparel, &c., of wife to belong to her as her separate estate.

Conveyance of freehold and leasehold estates of wife to her as her separate estate (*e*).

If wife dies first, husband

(*e*) This provision can now only be required where both the marriage and the acquisition of the property were before 1882. Even in that case, if the property had been settled to the wife's separate use, no conveyance would be necessary. See L. P. Act, 1925, First Schedule, Part II., paragraph 3; S. L. Act, 1925, ss. 1 (1) (iv) and 20 (1) (x), and see Vol. I., p. 606, note (*a*). If the parties were married after 1882, the wife is, by the M. W. P. Act, 1882, ss. 1 and 2, made a *feme sole* as to all her property existing at the time of the marriage or afterwards acquired; and by ss. 1 and 5 of the Act, a woman married before 1883 is in the same position as to all property acquired by her after 1882: see *Reid v. Reid*, 31 Ch. D. 402. The beneficial interests of a husband in the estate of a wife who has died intestate are set out in s. 46 of the Administration of Estates Act, 1925: see *post*, p. 936.

Provisions as to wife's property.

(*f*) By virtue of the L. P. Act, 1925, s. 72 (3) and (4), the husband and wife are enabled to convey the freeholds direct to the wife without the intervention of trustees.

(*a*) The common law doctrine that a husband cannot convey property direct to his wife was removed as to freeholds and choses in action by the C. Act, 1881, s. 50, re-enacted in s. 72 (2) of the L. P. Act, 1925, and the enactment in the M. W. P. Act, 1882, s. 1, by which every married woman is enabled to acquire and hold property as a *feme sole*, finally abolished the doctrine altogether: *Ramsey v. Margrett*, [1894] 2 Q. B. 18; see also L. P. Act, 1925, s. 37. It is therefore unnecessary to convey the leaseholds to trustees. It would generally be better to convey the freeholds or leaseholds by a separate deed, so as to avoid bringing the other provisions of the separation deed on to the title. See also as to the clauses in the text, *Pride v. Bubb*, L. R. 7 Ch. 64.

to be excluded
(b).

Husband to allow
wife's will to be
proved.

Custody
of infant
children
(c).

Expense
of main-
tenance
of infant
children
(d).

& engagements) go & belong to the persons or person who would have become entitled thereto if the said A. had died in her lifetime, & the said A. shall permit her will to be proved or admitted to her personal estate & effects to be taken out by such person or persons.

10. THE SAID B. shall have the sole custody & control of, *here name child*, & of their education & bring up until they respectively attain the age of — years without any interference whatsoever on the part of the said A.

11. [DURING SUCH time as any child or child of the said A. & B. shall during the joint lives of the said A. & B. be living with or under the control of the said B., the said A. shall pay to the trustees in trust for the said B. the sum of £—— p.a. in respect of each such child being under the age of — years, & the sum of £—— p.a. in respect of each such child being over the age of — years & under the age of twenty-one years & unmarried, such respective yearly sums to be apportionable at the commencement & termination thereof according to law, but to be payable by equal quarterly payments on the usual quarter-days, & to be applied by the said B. in or towards the maintenance & education or otherwise for the benefit of such child or child, but without liability to account so long as she shall maintain & educate such child or child to the satisfaction of the trustees; The said A. shall also pay the funeral expenses of any child who shall die while living with or under the control of the said B.,] [or, THE SAID B. shall, out of her own means, provide & pay for the maintenance & education of the child or child for the time being living with her or under her control by virtue of this

(b) See note (e) on last page. As to the binding effect of this clause in favour of the person or persons referred to, cf. *Re Flavell*, 25 Ch. D. 89.

(c) See the Custody of Infants Act, 1873, s. 2 of which makes valid an agreement giving a mother the custody of the children, subject to the discretionary power of the Court, as to which see the Guardianship of Infants Act, 1925: *post*, p. 724.

(d) A married woman having separate property is liable to maintain her children: *M. W. P. Act*, 1882, s. 21. Where the Court makes an order under s. 5 of the Guardianship of Infants Act, 1925, giving the custody of the infant to the mother a further order may be made, whether the father is residing with the mother or not, that the father pay such a periodical sum to the mother towards the maintenance of the infant as the Court, having regard to the means of the father, considers reasonable. Such an order for maintenance is unenforceable so long as father and mother reside together, and becomes ineffective if the mother continues to reside with the father for a period of three months after it is made.

deed,] [or, EACH OF THEM, the sd A. & B., shl, out of his or her own moys, provide & pay for the maintce & educon of any chln or child durg any period or periods while such chln or child shl be livg with him or her, or under his or her control.]

12. THE SD A. & B. shl resply at all convenient & reasble times (to be settled in case of dispute by the trees) have access to & communicon with the chln or child for the time being livg with or under the control of the other of them [or at school as hrinar is mentd].

Access to
children
(e).

13. THE SD K., L., & M., *chln*, shl as & when they resply attain the age of — yrs be placed at the expse of the sd A. at such schools in England [as he], or [at such schools] elsewhere as he, with the consent in writg of the sd B., or, “as the trees” shl from time to time determine, & such of them the sd K., L., & M., as shl for the time being be at school, shl pass the holidays at such places & in such mner as the sd A. [& B., or, “the trees”] shl from time to time direct, [havg regard to the reasble wishes of the sd A. & B.]

Schools
for
children
(f).

14. THE TREES may, if circes shl arise wch in their opinion render it absolutely necy for the welfare of the chln or child for the time being livg with or under the control of either of them the sd A. & B., remove such chln or child, & place them, him, or her, with or under the control of the other of them the sd A. & B.

Power to
trustees
to change
custody
of chil-
dren.

15. THE SD B., her exs & ads, & also the trees, & their respective exs or ads, shl at all times hrafter keep indemnified the sd A., his exs & ads, from all debts & liabilities [htofore or (b)] hrafter to be contracted or incurred [& from all torts htofore (b) or hrafter to be committed] by the sd B., & from

Indem-
nity to
husband
against
wife's
debts (a).

(e) This does not compel the party having the custody of the children to keep them in a place easy of access for the other party: *Hunt v. Hunt*, 28 Ch. D. 606.

(f) As to the right of the children to sue on such a provision as this, see *Gandy v. Gandy*, 30 Ch. D. 57.

(a) The provisions for the husband's indemnity should be retained although it has been determined that the wife has no power to pledge the husband's credit after a separation deed: *Eastland v. Burchell*, 3 Q.B.D. 432. As to the general law, see *Morel, &c., Co. v. Earl of Westmorland*, [1904] A. C. 11; and *ante*, p. 339.

(b) A covenant of indemnity against debts contracted before the separation is not a usual covenant: *Brailey v. Brailey*, [1922] P. 15.

Hus-
band's in-
demnity
against
wife's
debts.

all actions, proceedings, costs, damages, expses, claims, & demands whatsr in respt of such debts, liabilities [& torts] or any of them.

Proviso
that an-
nuity,
&c., shall
in certain
events
cease to
be pay-
able.

16. IF THE SD A. shl be obliged to pay any sum or sums of moy for or on acct of any debt or liability [htofore or] hrafter contracted or incurred by the sd B, or if the sd B. shl at any time take any proceedings against the sd A. for restiton of conjugal rights or orwise for compellg him to cohabit with her, or shl at any time directly or indirectly molest the sd A. [or any member or members of his family] or any pson or psons with whom he may reside [or his customers, or, "employer"] then & in any such case the sd annuity of £—— shl cease to be payable, [or, "the sd sum of £——, seed by the covt of the sd A. & the intt thron shl cease to be payable, & if the same sum shl have been pd by the sd A. to the trees, the same & the investmts & income throf shl thenceforth be held in trust for the sd A. absolutely "].

Proviso
that
debts
paid by
husband
may be
deducted
from an-
nuity (c).

17. IF THE SD A. shl at any time hrafter be called upon to pay or discharge, & shl actually pay or discharge any debt or liability htofore or hrafter contracted or incurred by the sd B., then & in every such case the sd A. may deduct & retain out of the sd annuity of £—— [deduct & retain, or be reimbursed out of the sd sum of £—— hrinbfe covted to be pd by him, & the investmts & income throf.] the amt wch he shl have so pd in respt of such debt or liability, togr with all costs & expses wch he shl have pd or incurred on acct throf, but so that this psnt provon shl not in anywise render the sd A. liable to the paymt of any of the debts of the sd B., or prejudice his rights or remedies under the covts of indemnity of the sd B. & the trees hrinbfe contd.]

Covenant
for
further
assur-
ance.

18. EACH OF THEM, the sd A. & B., or their respective exs or ads, shl at any time hrafter execute & do all such assurances & things as the other of them, his or her exs, ads, or assns, or the trees shl reasbly require for the ppose of givg full effect to this deed & the covts, agrmts, & provons hrin contd.

Provision
as to ap-
point-
ment of

19. THE STATUTORY POWER of apptg new trees of this deed shl, as to trees to be appted in the place of the sd C., or of any tree appted in his place, be vested in the sd A., & as to trees

(c) See last note.

to be apptd in the place of the sd D., or of any tree apptd in his place, shl be vested in the sd B. new trustees (d).

20. IF THE SD A. & B. shl be reconciled, & return to cohabiton (e) [or if their marre shl be dissolved, or they shl be judicially separated (f), by reason of any misconduct of the sd B. [occurr after the date hrof (g)]], then & in such case all the covts & provons hrin contd shl become void, but witht prejudice to any [sale or other] act previously made or done hrunder, or any proceedings on the pt of any of the pties hto in respt of any then antecedent breach of any of the covts or provons hrin contd (h). [And the trees shl hold any ppty then vested in them by virtue of this deed, subjt & witht prejudice to any disposons or engagemts thtofore made or entered into with respt to the same by the sd B., upon such trusts as will most nearly correspond with the trusts to wch the same wd then resply be subjt if this deed had not been executed.] Proviso in case of reconciliation or dissolution of marriage.

21. *Interpretation of trees*, p. 586, f. 8.

IN WITNESS, &c.

(d) See T. Act, 1925, s. 36.

(e) Isolated acts of intercourse do not of themselves amount to cohabitation: *Rowell v. Rowell*, [1900] 1 Q. B. 9.

(f) Arrangements for a separation sometimes embody provisions for a settlement or otherwise as to which it is extremely difficult to determine whether they are to cease in the event of a return to cohabitation, or are independent: see *Ruffles v. Alston*, L. R. 19 Eq. 539; *Re Spark*, [1904] 1 Ch. 451, and note, *ante*, p. 486. It is very important to exclude all such questions as in the text. Provision for reconciliation.

(g) As to the effect of this on the wife's right to a divorce, see *Bourne v. Bourne*, [1913] P. 164; *Thompson v. Thompson*, [1916] P. 165; *Lister v. Lister*, [1922] P. 227.

(h) See *Macan v. Macan*, 70 L. J. Q. B. 90.

II.

DEED of COVENANT securing ANNUITY to a PAST MISTRESS (a).

Parties.	<i>PARTIES</i> , A., covtor, 1; B., mistress, 2; C. & D., trees, 3,
Recitals.	WHAS the sd A. was lately on terms of intimacy with the sd B.,
Agreement.	but such intimacy has now ceased, AND WHAS the sd A. has agrd to make provon by way of annuity for the sd B. & orwise as hrinar mentd upon the terms & condons hrinar expressed. NOW THIS DEED made in psuance of the sd agrmt WITNESSETH as follows :—
Witnesseth. Covenantant.	1. THE SD A. hby covts with the sd C. & D. to pay durg the lifetime of the sd B. to the sd C. & D. or the survor of them or other the trees or tree for the time being of this deed (hrinar called the trees), the weekly (b) sum of £—, the first paymt to be made at the end of one week from the date hrof.
Declaration of trust.	2. THE SD weekly sum shl be held by the trees UPON TRUST to pay the same to the sd B., & so that in case of coverture the same shl be for her separate use witht power of anticipon,
Restraint on alienation.	& so also that the same shl be subjt to forfeiture if any act or event shl be done or happen whereby the same weekly sum or any pt throf wd if belonging absolutely to her become vested in or charged in favour of some other pson or psons, & in the event of the same being so forfeited the trees shl thenceforth

(a) A deed of covenant entered into in consideration of future cohabitation is invalid: *Gray v. Mathias*, 5 Ves. 286; but a deed otherwise valid is not invalidated by the fact that future cohabitation is contemplated: *Re Vallance* 26 Ch. D. 353; *Re Wootton-Isaacson*, 21 T. L. R. 89. As to agreements in consideration of past cohabitation, see Chitty on Contracts, 17th ed., p. 5; it is assumed in this case that there has been no issue. The annuity will not cease on the parties resuming cohabitation: *Re Abdy*, [1895] 1 Ch. 455. The effect of the parties marrying before 1883 was to suspend the annuity during cohabitation: *Fitzgerald v. Fitzgerald*, L. R. 2 P. C. 83.

Stamp. This deed requires an *ad valorem* stamp as a bond in respect of the covenant to pay a sum of money at stated periods. The stamp will be calculated at the appropriate rate on one weekly payment only: see *Clifford v. I. R. Commissioners*, [1896] 2 Q. B. 187, and distinguish, *Levis v. I. R. Commissioners*, [1898] 2 Q. B. 290; *Underground Electric Railways, etc. Ltd. v. I. R. Commissioners*, [1916] 1 K. B. 306. See also Alpe, 16th ed., p. 90, where the practice when payments are to be made weekly is stated.

(b) A weekly payment which may extend beyond a year is an annual payment within Case III. 1 (a) of Sch. D. of the Income Tax Act, 1918, and tax may be deducted: *Smith v. Smith*, [1923] P. 191.

pay or apply the same unto or for the maintce or psonal support or benefit of all or any one or more to the exclusion of the others or other of the followg objects, namely, the sd B. & her lawful issue (whether minors or adult) for the time being in existce in such shares if more than one & in such mner as the trees in their absolute discron may think fit, but if at any time after such forfeiture there shl be no lawful issue of the sd B. livg, then the sd weekly sum shl absolutely cease to be payable.

3. IT IS expressly stipulated by the sd A., that if the sd B. shl at any time molest or annoy the sd A. by any act or proceeding whatever, & in parlar if she should hold or attempt to hold any communicon with the sd A. or any of his relatives or friends either psonally or by letter or through the medium of any pson other than the trees, who shl be the only authorised intermediary for that ppose, or if she shl hold or attempt to hold any communicon with his wife or intd wife for the time being or any of her relatives or friends, or if the sd B. shl call herself by the name of the sd A. or shl represent herself to be his wife or shl come to reside within — miles of — House [or any other residee for the time being of the sd A.], then & in any such case the sd weekly sum shl be absolutely forfeited & cease to be payable.

Provision
against
molesta-
tion.

4. IF ANY dispute or question shl arise as to whether any act or proceeding or any communicon on the pt of the sd B. is a breach of the provon lastly hrinbfe contd, or as to the rights of the sd B. under this deed, the same shl be referred to the decision of two arbitrors or an umpire, whose decision shl be absolutely conclusive & bindg on all pties, & this shl be deemed an agrmt for a referee within the Arbitron Act, 1889.

As to
disputes.

5. IF THE SD A. shl by will bequeath or secure to the sd B. durg her life an annuity of eql or greater amt than the sd weekly sum hby made payable as afsd, then the annuity so bequeathed or secd shl be in satisfon of such weekly sum wch shl in that case cease to be payable from the death of the sd A.

Further
proviso.

6. THE POWER of apptg a new tree or new trees of this deed shl be vested in the sd A., his exs or ads.

Appoint-
ment of
trustees.

IN WITNESS, &c.

SETTLEMENTS (PERSONAL).

PRELIMINARY NOTE.

THE forms under this head include those for land settled as personalty by means of a trust for sale.

Title to
land held
on trust
for sale.

The trustees for sale are the estate owners holding the land as joint tenants and the proceeds of sale and the rents and profits until sale upon the beneficial trusts declared by the settlement. After 1925 land cannot be conveyed to more than four trustees, T. Act, 1925, s. 34 (2), and any attempt to convey to more than four persons will result in the legal estate vesting in the first four persons named in the assurance. Where more than four persons were seised of a legal estate under the old law it would appear that all of them still remain estate owners under the L. P. Act, 1925, but by s. 34 (1) of the T. Act, 1925, no appointment of new trustees can be made until the number is reduced to less than four. An exception to subsection (2) of the last-mentioned section limiting the number of trustees in the case of settlements made or coming into operation after 1925 to four where such settlements comprise land, is allowed by subsect. (3) in the case of charitable, ecclesiastical, or public trusts and of trusts of terms of years limited for raising money either by settlements or under the statutory powers for the protection of annual sums charged on land. In the case of wills, s. 160 of the Supreme Court of Judicature (C.) Act, 1925, limits a grant of probate or administration of the same property to not more than four persons.

Protec-
tion of
pur-
chasers
from
trustees
for sale.

A trust for sale of land is deemed in favour of a purchaser from the trustees to be subsisting until a conveyance is made to or by the direction of the persons interested in the proceeds of sale, and this is so whether the sale was made before or after the commencement of the Act: L. P. Act, 1925, s. 23. A power to postpone sale is implied in every trust for sale of land, in the absence of a contrary intention being expressed, whether the trust was created before or after the commencement of the Act or by virtue of the Act: s. 25. A direction in a settlement to retain or sell land is construed as a trust to sell with power to postpone: s. 25 (4). As to consents to the execution of the trust for sale and the protection of the purchaser from being affected by notice of the trusts of the proceeds of sale whether contained in the instrument creating the trust for sale or not, see ss. 26, 27, as amended by the L. P. (Amendment) Act, 1926. Save where the trustee is a trust corporation a receipt for purchase-money can only be given by at least two trustees, notwithstanding anything to the contrary in the instrument creating the trust: T. Act, 1925, s. 25.

The powers of management and delegation contained in ss. 28 (as amended by the Act of 1926) and 29 of the L. P. Act, 1925, and the power of the Court to act where the trustees decline to do so contained in s. 30 are referred to in the notes to the appropriate forms.

As to the manner in which the donee of an equitable power over or the person beneficially entitled to the proceeds of sale of land held in trust for sale can have effect given to their respective interests, see L. P. Act, 1925, s. 3.

As to registered land held on trust for sale, see L. R. Act, 1925, ss. 94, 95, and Vol. I., p. 690.

The following is a short reference to the more important legislation bearing on settlements of real estate on trust for sale and personal estate :—The L. P. Act, 1925, s. 76, enabling covenants for title to be implied; s. 169, enabling the Court to bind the interest of a married woman in property in respect of which she is restrained from anticipation or alienation or of which she is by law unable to dispose; ss. 1 (6), 19—22, as to the incapacity of infants to hold land or be trustees, the receipts of married infants and conveyances on behalf of infants; ss. 155 and 156, enabling the donee of a power to release or disclaim it; ss. 78—83, relating to the effect of covenants; s. 170, as to the acquisition and disposition of trust estates by married women :—The M. W. P. Act, 1882, ss. 1, 2, 5 (as amended by the M. W. P. Act, 1893), giving to every married woman the capacity of acquiring, holding, and disposing of property, and also of contracting (as to her separate estate), as a *feme sole*, and providing that the property of every married woman shall belong to her as a *feme sole*, except where the marriage and the acquisition of the property were both before 1883; ss. 6—9, providing specially as to investments, subject to a provision (s. 10) as to investments of the husband's money in fraud of his creditors; s. 11, enabling a policy to be effected by a wife on her own or her husband's life for her separate use, or by a wife or husband on her or his own life for the benefit of the other of them or the children; s. 12, giving married women remedies for the protection and security of their separate property (including the right in a proper case of excluding a husband from the matrimonial home: *Shipman v. Shipman*, [1924] 2 Ch. 140 (and see s. 17); ss. 13—15, regulating the liability of the wife and husband respectively in respect of the wife's ante-nuptial debts; s. 17 stating how questions relating to property between husband and wife are to be determined (see *Wilder v. Wilder*, 56 Sol. J. 571; *Re Humphrey*, 61 Sol. J. 382); s. 18, making special provision for the case of a married woman who is a trustee (and see s. 24); s. 19 (see *Rothschild v. Fisher*, [1920] 2 K. B. 243), providing that the Act is not to affect settlements before or after marriage of the property of a married woman, or a restriction against anticipation, subject to the rights of her ante-nuptial creditors, and to a provision avoiding settlements in fraud of her creditors; and ss. 20, 21, making a married woman having separate estate liable for the maintenance of her husband and children; and see M. W. P. Act, 1908, as to her liability for the maintenance of her parents :—The M. W. P. Act, 1907; s. 2, invalidating any settlement by the husband respecting the property of the wife unless executed by the wife if of full age or confirmed by her after attaining full age, subject to a provision binding in case of the wife's death under age any property of hers to which he becomes entitled on her death, *e.g.*, a covenant to settle the wife's property which would have been effectual before the Act of 1882 and the effect of which was preserved by s. 19 of that Act :—The Trustee Act, 1925, ss. 1 to 11,

Protection of equitable powers and interests.

L. R. Act 1925.

Legislation affecting settlements.

The L. P. Act, 1925.

The M. W. P. Acts.

- The Trustee Act, 1925. as to investments by trustees, s. 7 being an important reversal of the old law that trustees could not hold bearer securities unless specially authorised by the trust instrument (as to which see also the Colonial Stock Act, 1900, s. 2, and *post*, p. 534); ss. 34 to 40, as to the appointment of new trustees, the vesting of trust property in them (which can now be done by implication in certain cases), and see also Vol. I., pp. 119 *et seq*), and the retirement of trustees; ss. 12 to 16, as to the powers of trustees under a trust for sale (including a power to divide the land on sale either vertically, horizontally, or in any other manner), s. 19, as to the powers of trustees to insure against fire; s. 14, as to trustees' receipts; s. 15, giving power to trustees to compound liabilities, apportion blended trust funds, &c.; s. 18, as to the survivorship of powers to two or more trustees; s. 25, as to power to delegate during the absence abroad of a trustee; ss. 26 to 30, as to the indemnity of trustees, including new provisions extending to trustees the protection formerly only afforded to personal representatives under Lord St. Leonard's Act after advertisement for claims against the trust estate and protection against liability in respect of rents and covenants upon distribution; ss. 31—33, containing the new statutory powers of maintenance and advancement, and a statutory form of words for protecting a life interest against alienation which may be incorporated in any trust instrument; ss. 41—56, as to the appointment of trustees by the Court and vesting orders; and s. 65, as to a trustee becoming a convict:—and the Public Trustee Act, 1906, authorising the Public Trustee to act as a custodian trustee or as an ordinary trustee: see Vol. I., pp. 123, 124, and 159, and note to *Prece.* I., *post*, p. 587.
- S. L. Act, 1925. The S. L. Act, 1925, does not apply to settlements of land by way of trust for sale, see Schedule of L. P. (Amendment) Act, 1926. The tenant for life of land strictly settled is under that Act the estate owner in fee simple of the settled land and his powers and duties are dealt with, *post*, p. 644.
- Ad. of E. Act, 1925. As to the devolution on death of real estate, which by s. 3 (1) (ii), of the Administration of Estates Act, 1925, includes land held on trust but not the money to arise on a sale under the trust, see s. 1 (1) of the last-mentioned Act.
- Stamps. As to the stamps on settlements, see Stamp Act, 1891, schedule; Vaizey on Settlements, 1518, *Onslow v. Inland Revenue Commrs.*, [1891] 1 Q. B. 239.
- Voluntary settlements. The Fin. (1909-10) Act, 1910, s. 74, provides that a conveyance or transfer operating as a voluntary assurance shall be chargeable with the same stamp as if it were a conveyance on sale with the substitution of the value of the property for the consideration for the sale, and renders adjudication obligatory. The section further provides that a consideration, *other than marriage*, shall not be deemed to be valuable where the Commissioners of Inland Revenue are of opinion that, by reason of the inadequacy of the consideration, the conveyance confers a substantial benefit on the person to whom it is made; and also that where a settlement is chargeable as a conveyance under the section and also as a settlement under the Stamp Act, 1891, it shall be chargeable as a conveyance only.
- It will be observed that the duty charged by s. 74 is imposed on the conveyance or transfer only, and therefore, where a voluntary settlement is made of property transferred by a separate instrument, that instrument will require an *ad valorem* stamp, and the settlement a deed stamp only, and further that where no instrument is required to transfer the property (*e.g.* where it consists of cash or bearer bonds), no additional duty is imposed.

Where a conveyance or transfer is stamped in respect of the consideration mentioned therein a subsequent purchaser for value will not be affected by the fact that the consideration was under the true value: *Re Weir & Pitt*, 55 Sol. J. 536.

RECITALS (a).

1. WHAS a marre is intended shortly to be solemnised betn Intended marriage (c).
the husbd & wife (b).
2. WHAS THE husbd & wife intermarried on the — day Marriage and agree-
of — & previous to such marre they agrd to make such ment for settle-
settlemt as is hrinar contd. ment (d)

(a) See also the forms of recitals, Vol. I., pp. 441 *et seq.* To avoid mistakes and constant repetition of the full names of the parties the plan has been adopted in this edition of designating the husband, wife, and the trustees as such throughout the following forms and precedents. These designations will, of course, be added at the commencement of the deed, and should be strictly adhered to throughout the draft.

(b) If either is an infant, add "with the consent of the sd, parent or guardian." As to the consents now required to the marriage of an infant, see the Schedule to the Guardianship of Infants Act, 1925.

(c) "Marriage" means a valid marriage: Norton on Deeds, 410. As to the effect on the settlement of the marriage being illegal, annulled or not being solemnised, see *Re Garnett*, 74 L. J. Ch. 570; *Re Wombwell's Settlement*, [1922] 2 Ch. 298; Norton, *sup.*; and see the cases on marriage with a deceased wife's sister collected in *Phillips v. Probyn*, [1899] 1 Ch. 811; also the Marriage (Prohibited Degrees of Relationship) Acts, 1907 and 1921, and *Re Whitfield*, [1911] 1 Ch. 310; *Re Phillips*, [1919] 1 Ch. 128; *Re Springfield's Settlement*, 38 T. L. R. 263. Meaning of marriage.

A settlement made in contemplation of a marriage which is not solemnised is not binding: *Bond v. Walford*, 32 Ch. D. 238.

Where a person domiciled abroad contracts in England a marriage valid according to English law with a person domiciled in England, he cannot successfully allege in an English Court that he was under a personal disability to marry according to the law of his domicile: *Chetti v. Chetti*, [1909] P. 67. Where the parties have the same domicile the validity of the marriage depends on the law of the domicile: *Re Bozzelli*, [1902] 1 Ch 751.

(d) A recital in this form in a post-nuptial settlement satisfies s. 4 of the Statute of Frauds, now re-enacted, so far as affects interests in land, in s. 40 of the L. P. Act, 1925: *Re Holland*, [1902] 2 Ch. 360; and if it is correct shows that the settlement is not voluntary within the meaning of Fin. (1909-10) Act, 1910, s. 74. Post nuptial settlement.

As to what may constitute valuable consideration on a post-nuptial settlement, see *Re Tetley*, 3 Mans. 226, 321; *Hance v. Harding*, 20 Q. B. D. 732; *Mackintosh v. Pogose*, [1895] 1 Ch. 505; *Re Pope*, [1908] 2 K. B. 169; and *post*, p. 632.

Transfer pursuant to agreement to settle of property belonging to each spouse.

3. AND WHAS psuant to an agrmt made upon the treaty for the intd marre the ppty specified in the first schdle hto (wch belongs to the husbd) & the ppty specified in the second schdle hto (wch belongs to the wife) has been resply transferred into the names of [or delivered to] the trees upon trust (as to the ppty specified in the first schdle hto) for the husbd & (as to the ppty specified in the second schdle hto) for the wife until the intd marre, & after the solemnison throf (as to all the sd ppty) upon the trusts hrinar expressed.

Transfer of bearer bonds or other property passing by delivery.

4. AND WHAS psuant to an agrmt made upon the treaty for the intd marre — Bonds of the — Governmt for £ — each [or “for sums amounting in the aggregate to £ — ”] bearing intt at the rate of £ — p.c. p.a. [or “the bonds and securities the parlars whrof are specified in the schdle hto”] belonging to the husbd have been or “are intended to be forthwith” delivered by him or by his direction to the trees to the intent that the same shl be held in trust for the husbd until the intended marre & after the solemnison throf upon the trusts hrinar expressed.

Title to stocks, &c., in possession, and agreement to settle.

5. AND WHAS the husbd [wife] is absolutely entitled to the ppty specified in the schdle hto or “the several stks, funds, shares & securities followg, that is to say, &c.,” & upon the treaty for the intended marre it was agrd that the same shd be transferred to the trees in trust for the husbd [wife] until the intended marre & after the solemnison throf upon the trusts hrinar expressed.

Transfer of stocks.

6. AND WHAS the transfer agrd to be made as afsd of the sd ppty [stks, funds, shares & securities] to the trees has been or “is intended to be forthwith” duly made & perfected.

Statement of value of stocks for stamp duty (a).

7. AND WHAS the ppty [stks, funds, shares & securities] specified in the schdle hto & hby settled does not togr exceed in value the sum of £ — accordg to the average market price throf on the day of the date hrof.

Title in possession to share of residuary

8. AND WHAS under the will of X., deced, dated, &c., & a codl thereto, dated, &c., both of wch were duly proved in the — Probate Registry on, &c., by, &c., the husbd or “wife,” [as

(a) See Stamp Act, 1891, s. 6, as amended by the Fin. Act, 1899, s. 12.

one of the chln of K. deced,] is [will upon the solemnison of the intended marre become] absolutely entitled in posson to one eql — pt or share of the residuary psonal este [& of the net proceeds of the sale & conversion of the real este] of the sd testor, wch, [so far as at psnt realised & ascertained,] consists of or is represented by the ppty specified in the schdle hto (b), & now standg in the names of [or orwise vested in or under the legal control of] L. & M. as trees of the sd will & codl, [or, “the parlars & amt of wch este have not yet been ascertained”]; & the husbd or “wife” may [in the event of the death of any of the other chln of the sd K., being male under the age of twenty-one yrs, or being female under that age & witht havg been married, or, “in certain events,”] become entitled to a further share or shares of such residuary este & premes.

estate
and to a
possible
further
share.

9. AND WHAS under a settlemt (hrinar called the settlemt of 18—), dated, &c., & made, &c., or the will of T., deced, &c., as in f. 8 [& a deed poll of apptmt, dated, &c., under the hand & seal of —,] the husband or “wife” is [will upon the solemnison of the intd marre become] absolutely entitled to the sum of £— 2½ p.c. Consold Stk (c), pt of a larger sum of like Stk subjt to the trusts of the settlemt of 18— [the sd will & codl,] or, “to one eql — pt or share of the trust ppty [wch now is or by means of the accruer of any other ppty under the proven in the settlemt of 18— contd for the settlemt of after-acquired ppty of the sd X., shl at any time become] subjt to the trusts of the settlemt of 18— [the sd will & codl,]” or, “to one eql — pt or share of all & singr the trust ppty, subjt to the trusts of the settlemt of 18—, [the sd will & codl,] wch shall remain after satisfyg a previous apptmt in favour of L., a daur of the sd X., made by a deed poll, dated, &c., subjt to the life intt of the sd X. thrin [subjt to certain prior intts thrin durg the lives & life of the sd X. & Y., & the survor of them].”

Title to
rever-
sionary
share in
trust
funds
under
settle-
ment or
will.

10. AND WHAS by virtue of a settlemt (hrinar called the settlemt of 18—), dated, &c., & made, &c., being the settlemt made on the marre of the sd X. & Y., the parents of the husbd or “wife” [& a deed poll of apptmt under the hands & seals of

The same,
subject to
increase
by ac-
crual of
other
shares.

(b) The particulars of the trust funds should be given, so far as ascertained, for the purpose of the *ad valorem* stamp duty.

(c) As to the designation of the public funds, see Vol. I., p. 89, note (c).

the sd X. & Y. bearing even date with but executed bfe this deed] the husbd or "wife" will upon the solemnison of the intended marre become entitled (subjt to certain prior trusts during the lives & life of the sd X. & Y., & the survor of them, & to certain powers of changg investmts & of advancemt [& to a power enabling the sd Y. if she shd survive the sd X. & marry again to appt pt of the ppty thereby settled to or in favour of an aftertaken husbd & her chln by him] thrin contd) to an eql share, togr with the other child or chln of the marre of the sd X. & Y. (if any) who being male shl attain the age of twenty-one yrs or being female shl attain that age or marry, in the ppty settled [or agrd to be settled] by the settlemt of 18—, wch now consists of the ppty specified in the schdle hto & stands in the names of [or is orwise vested in or under the legal control of] L. & M. the psnt trees of the settlemt of 18—, or if there shl be no such other child to the entirety of the sd ppty.

Title to
portion
charged
on real
estate (a).

11. AND WHAS under or by virtue of a settlemt [trust instrumt] dated, &c., & made, &c., & a deed poll of appointmt under the hand & seal of the sd X., the wife being one of the younger chldn of the sd X. for whom portions are raisable under the trusts of the sd settlemt [trust instrumt] is [will upon the solemnison of the intd marre become] absolutely entitled to the sum of £—, pt of the sum so raisable for portions as afsd, & payable on the death of the sd X. with intt thron from his death at the rate of 4 p.c. p.a. until paymt.

Particu-
lars of
trust
property
(b).

12. AND WHAS the ppty subjt to the trusts of the settlemt of 18—, [the sd will & codl,] or, "representg the residuary este of the sd testor, [so far as the same has at psnt been realised & ascertained,]" consists of, *state investmts, as*, "the sum of £— Debenture Stk of the — Rly Co., the sum of £— invested on mtge of a freehd este at —, in the county of —, &c.," or, "the ppty specified in the schdle hto," wch are resply [is] now standg in the names of or vested in or under the legal control of L. & M., the psnt trees of the settlemt of 18— [the sd will & codl].

(a) The portion being an equitable interest only will not come on the title to the land and need not be separately assigned.

(b) See *ante*, p. 503, note (b).

13. AND WHAS the ppty now subjt to the trusts of the settlemt of 18— consists of the ppty specified in the first schdle hto, wch is now standing in the names of L. & M., the psnt trees of the settlemt of 18—, & of the freehd, enfranchised copyhd, & leasehd ppty specified in the second schdle hto, wch has been pchased under a power contd in the settlemt of 18—, & is now vested in & held by the sd trees upon the trusts thrin contd (c) for the sale of the sd ppty, & for the applicon of the net sale moys & of the net rents & profits of the sd ppty, or of the unsold pt throf for the time being, upon the trusts thereby declared concerng the monys applied in the pchase throf, & the income of such moys (d).

The same where partly consisting of land purchased and held as personalty.

14. AND WHAS upon the treaty for the intended marre it was agrd that the sd one eql undivided share to wch the husbd [wife] is [will upon the solemnison of the intended marre become] entitled in the ppty comprised in the settlemt of 18— (a) [will] shd be assnd to the trees in mner & for the pposes hrinar appearing.

Agreement for settlement of property comprised in a settlement or will.

15. AND WHAS upon the treaty for the intended marre it was agrd that [the several trust premes to wch the husbd & wife are or may become resply entitled as hrinbfe recited] [or all the share or shares of the husbd [wife] whether in posson, revon, or expectancy, & whether vested or contingent, of or in, &c., whto the husbd [wife] is or may become entled as afsd] shd be assnd to the trees upon the trusts hrinar declared concerning the same [resply.]

Agreement to assign property belonging to each or one spouse.

(c) Subject to any direction to the contrary contained in the settlement land purchased by trustees for sale under a power in the settlement is held upon an implied trust for sale : L. P. Act, 1925, s. 32.

(d) Where the property consists partly of land settled upon trust for sale by deed of even date continue “& also of the net sale moys to arise from a sale of lands now vested in the sd trees as trees for sale throf under a convce of even date with the settlemt of 18— & of the net rents & profits throf until sale.”

Variation where property comprises land settled in trust for sale by deed of even date.

(a) If desired add “or wch at any time hrafter may become subjt to the trusts of the sd settlemt by virtue of the agrmt thrin contd for the settlemt of the after-acquired ppty of the sd X.” These words are rarely used. If there is a covenant for the settlement of the wife’s after-acquired property they are unnecessary for her protection.

Convey-
ance in
trust for
sale of
freeholds,
lease-
holds,
and
enfran-
chised
copy-
holds to
trustees
(c).

16. AND WHAS psuant to an agremt in that behalf made upon the treaty for the intended marre (b) the husbd with the approbation of the wife has by a convee (hrinar called the convee) bearing even date with & exted bfe this deed & made, &c., assured certain freehd ppty situated at — in the parish of — in the county of —, & thrin more parlarly described, to the trees in fee simple subjt as to part throf weh was formerly of copyhd tenure to the manorial incidents affectg the same or “the compenson rentcharge” & the rights of the lord of the manor thrin mentioned or refd to in trust for the husbd until the intended marre & aftwds upon the trusts thrinar expressed And by the same convee the husbd with the like approbation has assned certain leasehd ppty situated, &c., to the trees for the respve residues of the sevl terms granted by the thrin recited sevl leases resply subjt to the respve rents & covts on the pt of the lessees & condons by and in such leases resply reserved & contd upon trust for the husbd until the intended marre & after the solemnison throf upon the trusts thrinar expressed, And it was thereby declared that the trees shd after the solemnison of the intended marre at the request or discron thrin mentd sell the sd freehd (includg the enfranchised copyhd) & leasehd premes in mner thrin mentd & shd stand possessed of the net moys to arise from any such sale & the net rents & profits of the sd premes or of the unsold pt throf for the time being (after paymt of the expses thrin mentd) upon such trusts as shd be declared concerning the same by a deed thrin referred to meaning this deed.

Title to
and
agree-
ment for

17. AND WHAS the husbd is absolutely entitled to the poly of assurce hby settled [the sevl pols of assurce specified in the schdle hto] & upon the treaty for the intended marre it was

(b) It is proper to show that the conveyance is made in consideration of marriage so as to avoid the stamp imposed on gifts *inter vivos* by the Fin. (1909-10) Act, 1910, s. 74: see *ante*, p. 500.

If timber, trees or underwood are growing on the land which, when felled, will become liable to estate or succession duty: Fin. Act, 1912, s. 9; the fact should be recited: see Vol. I., p. 311, note (g).

(c) The conveyance should be made by a separate deed in order to keep the trust off the title: see Prec. XII., *post*, p. 611, though a purchaser of a legal estate from the trustees is not concerned with the trusts affecting the proceeds of sale even if they are declared by the same instrument by which the trust for sale is created: L. P. Act, 1925, s. 27 (1).

agrd that the same shd be transferred to the trees in mner & upon the trusts hrinar expressed [or “ & he has by an assignmt of even date with & executed bfe this deed & made, &c., assned the sd poly [pols] & all moys assured by or to become payable thrunder to the trees (d) in trust for the husbd until the intended marre & after the solemnison throf upon such trusts as shl be declared concerning the same by a deed thrin referred to meaning this deed.]

settle-
ment of
policy.

18. AND WHAS psuant to an agrmt in that behalf made upon the treaty for the intended marre, the husbd has effected an assuree for the sum of £——, payable on his death (e), in the —— Insee Office, by a poly No. ——, Series ——, in the names of the trees, under the annual premium of £——, [& anor assuree, &c.], to the intent that the same poly [respive pols] shl be held in trust for the husbd until the intended marre & after the solemnison throf upon the trusts hrinar expressed.

The
same,
where
effected
in names
of trus-
tees.

19. AND WHAS the husbd or “ wife ” is absolutely entitled to a sum of £—— & intt secd on mtge of certain freehd ppty situated at, &c., [belonging to X.] by a mtge dated, &c., & made, &c., & psuant to an agrmt made upon the treaty for the intended marre the husbd or “ wife ” has by a transfer bearing even date with & executed before this deed & made, &c., transferred the sd mtge debt & intt & the benefit of the securities for the same & all his or her este & intt in the mtged premes to the trees subjt to the right of redmon then subsistg thrin in trust for the husbd or “ wife ” until the intended marre & after the solemnison throf upon such trusts as shd be declared concerning the same by a deed thrin referred to meaning this deed.

Title to
mortgage
and
transfer
to trus-
tees (f).

20. AND WHAS upon the treaty for the intended marre it was agrd that the sd mtge debt of £—— & intt & the securities for the same shd be transferred to the trees in mner & upon the trusts hrinar expressed.

Agree-
ment for
transfer
of mort-
gage.

(d) See *post*, p. 589, note.

(e) For an endowment policy add “ or on the —— day of —— wchever shl be the earlier.”

(f) The transfer should be made by a separate deed though it is no longer necessary to keep the trusts off the title: L. P. Act, 1925, s. 113; see form of transfer and note, *post*, p. 597.

Agreement to pay annual or principal sum.

21. AND WHAS upon the treaty for the intended marre, it was further agrd that the sd — shd enter into such covt as is hrinar contd for the paymt to the trees of the annual sum, or, “ppal sum & intt,” hrinar mentd, to be held & applied by them upon the trusts & in mner hrinar expressed [and that such annual sum shd be collaterally secured in mner hrinar appearg].

Agreement as to settlement of wife's after-acquired property. General agreement.

22. AND WHAS it has been also agrd that such provon shd be made for the settlemt of the [other or] after-acquired ppty of the wife, as is hrinar contd.

23. AND WHAS it has been also agrd that this deed shl contain the sevl other covts, clauses, & provons hrinar contd.

INTRODUCTORY CLAUSES.

NOW THIS DEED made in psuance of the sd agrmt[s] & in conson of the intended marre WITNESSETH as follows :—

Assignment by husband or wife of personal estate to trustees. As to implying covenants for title in a settlement under L. P. Act, 1925.

1. The husbd or “wife” as settlor (a) with the approbation of the wife or “husbd” hby assns unto the trees ALL, &c.,

(a) The provisions of the L. P. Act, 1925, enabling the ordinary covenants for title to be implied in a settlement on marriage or for other valuable consideration by conveying “as beneficial owner” are seldom used in marriage settlements, and it is the practice to make each settlor convey “as settlor” so as to imply a covenant for further assurance only : see Elph. Introd., 7th ed., 405.

As a covenant for further assurance occurring in a conveyance for value not containing a limited covenant for title, or against incumbrances, has been held to entitle the grantor to call on the covenantor to clear off all incumbrances : Norton on Deeds, p. 563 *et seq.* ; *Re Jones*, [1893] 2 Ch. 461, it will be safer, where the title to the property intended to be settled has not been fully investigated, to qualify the covenant implied by the use of the words “as settlor,” by express words (see *post*, p. 586) restricting the obligation so as to exclude any liability on the part of the settlor or persons deriving title under him to complete the title by calling in any prior estate or incumbrance which may have been overlooked : see, however, *Monypenny v. Monypenny*, 9 H. L. Cas., at p. 134, and *West v. Williams*, [1899] 1 Ch., at p. 147.

As to implying

The restricted covenant for further assurance implied by conveying “as settlor” (L. P. Act, 1925, s. 76 (1) (E)), may be implied in a voluntary

Parcels (a) To HOLD [subj to the intt of the sd, *prior tenants for life*, *thrin or* "subj to the prior interests in or affecting

settlement; but should it be desired (which is not likely) that the settlor should in such a case enter into the full covenants for title the covenants must be inserted at length, or the statutory covenants incorporated by an express clause: see Vol. I., p. 511. A deed of gift to a person absolutely would probably be a conveyance "by way of settlement" under the Act, but as that is doubtful, an express covenant for further assurance must, if intended, be inserted in such a case, or the statutory covenant expressly incorporated.

Where a trustee or mortgagee joins as a conveying party in a settlement, the ordinary covenant against incumbrances may, of course, be implied under the Act (s. 76 (1) (F.)), by his conveying "as trustee," or "as mortgagee."

As to covenants for title generally, see Vol. I., pp. 507 *et seq.*, note; Vaizey on Settlements, 320 *et seq.*

It should be remembered that a conveyance of an interest subject to a power of appointment by another person does not pass any interest that the conveying party may subsequently acquire under an appointment: *Lovett v. Lovett*, [1898] 1 Ch. 82. See a form on p. 510, note, for use where it is intended that such interest should pass.

(a) The following forms of parcels for personal estate are adapted to the more ordinary cases. For a vested reversionary interest under a settlement, "ALL THAT the sd moiety, or, 'eql — pt or share' [or other the pt or share] to wch the husbd or 'wife' is [or will upon the solemnison of the intended marre, or in any other event, become] entitled under or by virtue of the recited settlmt [the settlmt of 18—] [& the sd deed poll or apptmt of, &c.,] of or in the trust ppty comprised in [or wch is now or may at any time become subj] to the trusts of the recited settlmt, [the settlmt of 18—] expectant on the death of the sd — & —."

For a vested share and possible additions by accruer, &c., of a legacy, "ALL THAT eql — pt or share [or other the pt or share] to wch the husbd [wife] is entitled under or by virtue of the sd will & codl of the sd L., & all other (if any) the pt or share, or pts or shares, to wch he [she] may hrafte become entitled by accruer, survivorship, or orwise, in the event of the death of any of the other chln of the sd X. & Y., under the age of twenty-one yrs, or in any other event, of or in the sd legacy or sum of £— bequeathed by the sd will in trust as hrinfte recited, or the investmts or ppty now or from time to time representg the same, & of or in the accumulons throf, expectant on the death of the sd X. & Y."

For a share in possession of a residuary estate under a will, "ALL Share of

cove-
nants
in a
voluntary
settle-
ment.

As to
covenant
against
incum-
brances
by trus-
tee, &c.

Forms of
parcels.
Personal
estate.
Vested rever-
sionary
interest.

The same,
with pos-
sible ac-
cretions.

X

the same under the settlemt of 18— [the sd will & codl]"]
 UNTO the trees (b) IN TRUST for the husbd or "wife" until the

residue
under
will.

THAT the sd eql — pt or share [or other the pt or share] of the husbd or 'wife,' under the sd will & codls of the sd L., of or in the residuary psonal este, & the proceeds of the sale, & the rents & profits until sale, of the real & leasehd este of the sd testor, & the investmts & ppty now or hrafter representg the same resply."

Share
under or
in default
of ap-
point-
ment.

For a share under or in default of appointment, "ALL THAT pt or share either vested or contingent of the sd A. & either by virtue of any apptmt by the sd B., or in default or on failure of such apptmt in the trust ppty subjt to the trusts declared by, &c.," or, "ALL the pt or share, pts or shares, & other intt, whether vested or contingent, to wch the husbd [wife] is now or may hrafter become entitled, whether in default of apptmt, or under any apptmt already or hrafter made, or on failure of any such apptmt of or in the trust ppty [wch is now or may at any time hrafter become] subjt to the trusts of the sd, &c." See *Re Harper's Settlement*, [1919] 1 Ch. 270.

Contin-
gent in-
terest.

For a contingent interest, "ALL the pt or share, pts or shares, or the whole, as the case may be, to wch the husbd [wife] will, in the event of his [her] attaing the age of — yrs, or, 'in the event of his [her] survivg the sd X.,' or in any other event, become entitled, of or in, &c., & the accumulons throf under, &c.," or, "ALL & every the pt or share, pts or shares, & intts whatsr to wch the husbd [wife] is now in anywise entled, in posson, reversion, expectey, contingency, or orwise, under or by virtue of, &c., or by any means whatsr, of or in, &c., & of or in all existg & future accumulons throf."

Policy of
assur-
ance.

For a policy of assurance, "ALL THAT poly of assurce for the sum of £—— effected in the — Assurance Society in the

(b) If the settlor's interest does not arise until the marriage, continue, "after the solemnison of the intended marre Upon the trusts & subjt to the powers & provisions hrinar expressed."

Words of limitation are not strictly necessary in conveyances of freehold land, L. P. Act, 1925, s. 60, but for the reasons given in Vol. I., p. 439, they should still be inserted.

As to the omission under the old law of words of limitation in disposing of equitable interests (1) in personal property subject to a trust for conversion into land or (2) in the prospective proceeds of sale of land, see *Re Monckton*, [1913] 2 Ch. 636.

intended marre & after the solemnison throf (c) Upon the trusts & subj't to the powers & provons hrinar declared & contd concerning the same.

name of the husbd [names of the trees] payable on the death of the husbd [*for endowment policy say 'or on the — day of — wchever shl first happen'*] dated, &c., numbered — & under the annual premium of £ — [reducible by the appcon of profits as thrin mentd] & all moys to become payable thrunder & the full benefit throf," or, "ALL THOSE — sevl pols of assuree the parlars whrof are specified in the schdle hto, & all moys, &c."

For a share of the proceeds of sale under the statutory trusts of real estate limited to tenants in common in remainder, "ALL THAT the equal — pt or share [or other the pt or share] to wch the husbd [wife] is or hrafter may become entitled under or by virtue of the sd will of the sd X. of & in the proceeds to arise from the sale on the death of the sd —, *tenant for life*, of the ppty devised by the sd will in trust as afsd or the investmts or ppty now or from time to time representg the same."

Share of proceeds of sale to arise under statutory trusts, of property comprised in another settlement. Mortgage debt (a).

For a mortgage debt, "ALL THAT the sd ppal sum of £ — [formg pt of the sd sum of £ —] owing on the secy of the sd mtge of, &c., & the intt now due & henceforth to become due for the same, & the full benefit of all securities for the same ppal sum & intt."

For furniture, &c., "ALL & SINGR the furniture, plate & plated articles, pictures, prints, [diamonds, jewels, trinkets, psonal ornants,] & other articles & effects belongg to the husbd [wife], wch are parlarly described in the schdle hto," or, "ALL the furniture, plate, & other articles & effects of househd or domestic use or ornamt wch are now in or about the messe or dwelling-house in wch the husbd [wife] now resides, situate & being, &c., or the out-bldgs, gardens, or grounds throf."

Furniture, &c.

(c) Where the conveyance and settlement are effected by separate deeds continue: "Upon such trusts & with & subj't to such powers & provons as are or shl be declared & contd concerning the same in & by a settlem't intended to bear even date with & to be executed immediately after this deed & to be made between *pties* [the same pties as are pties hto.] "

(a) The words in the text are sufficient to pass the legal estate in the security as well as the debt and the benefit of all the mortgagor's covenants: see L. P. Act, 1925, s. 114; and *ante*, p. 238. Notwithstanding this, where

Trust for investment and power to vary.

2. THE TREES shall after the solemnison of the intended marre stand possessed of the said [shares & interests hrinbfe assigned & also of the said] sum of £—— stock [bonds] [stocks funds shares and securities] *or as the case may be* so transferred [or delivered] or intended to be transferred [or delivered] to them as afsd [& also of the sd sum of £—— cash so paid to them as afsd] [& also of the sd mtge debt of £—— transferred to them by the recited transfer of even date herewith] [& also of the residuary or net moneys to arise from any sale under the sd trust for sale in the recited convce of even date herewith contained] UPON TRUST that the trees may either allow the same (b) [the sd shares & premes hrinbfe assigned as & when the same shall fall into possession & be reced by them &] the sd sum of stock [bonds] [stocks funds shares and securities] [& the sd mtge debt] [or any of them] or any part or parts thereof respvly to remain as actually invested (c), so long as the trees think fit (d), or may at any time or times, with the consent (e) of the husbd & wife, or the survor of them durg their, his, or her lifetime, & after the death of such survor, at the discrion of the trees, sell call in, or convert into moy, the same, [or any of them], or any pt throf [respvly], & shl with the like consent, or at the like discrion, invest the moys produced thereby [and also all capl moys wch may be received in respect of the sd shares & premes hrinbfe assured] [and also the sd sum of

the settlor is a legal mortgagee a separate transfer, as in *Prec. V., post*, p. 597, should be taken.

(b) This clause should be framed so as to afford a complete summary of all the property brought into settlement except property the trusts of which are for convenience declared by reference later in the deed, as, for instance, life policies and money or property covenanted to be paid or transferred at a later date.

Unless a contrary intention appears trustees for sale of land have an implied power to postpone the sale and are not liable in any way for postponing the sale in the exercise of their discretion: *L. P. Act, 1925, s. 25*.

(c) As to the power of trustees to retain shares issued in lieu of shares originally settled upon reconstruction of the company or upon cancellation of the old shares, see *T. Act, 1925, s. 10 (3)*, and *Re Smith*, [1902] 2 Ch. 667; *Re Anson*, [1907] 2 Ch. 424.

(d) The presumption is that, if trustees postpone conversion and retain existing investments, they have properly exercised their discretion: *Re Oddy*, 104 L. T. 128. See *Re Dent's Settlement*, *L. J. Newsp.*, 1908, p. 127 (Feb. 29, 1908).

(e) An infant can give this consent: *Re Cardross*, 7 Ch. D. 728; *Re Sutton*, [1921] 1 Ch. 257.

cash] [and also the residuary or net moys to arise from any sale under the sd trust for sale in the recited convce of even date herewith contained] and any other capl moys weh may be received by the trees [upon repayment of the sd mtge debt or upon payment off or discharge at maturity of all or any of the debres or securities afsd or orwise] in respect of the trust premes in the names (f) of the trees in or upon any investmts hby authorised with power with such consens or at such discron] as afsd to vary or transpose (g) any investmts for or into others of any nature hby authorised.

3. THE TREES shl stand possessed of the residuary or net moys to arise from any sale under the sd trust for sale in the recited convce of even date herewith contd of the ppty thereby assured or any pt throf (k) **UPON TRUST** that the trees shl with the consent of the husbd & wife or the survor of them during their, his or her lifetime & after the death of such survor at the discron of the trees invest the same residuary or net moys in the names, &c., as *in f. 2.*

The same, where moneys arising from sale of real estate are separately settled.

(f) Securities to bearer are now allowed unless expressly prohibited by the settlement. A direction to retain or make investments in the names of the trustees is not such a prohibition: T. Act, 1925, s. 7. If it is desired to prohibit investment in bearer securities, add proviso to f. 1 on p. 537, *post*, in the investment clause.

(g) Power to vary investments will be implied: *Re Cooper*, [1873] W. N. 87; *Re Pope*, [1911] 2 Ch. 442; and an express power to vary is now given by the T. Act, 1925, s. 1 (1). In exercising a power to vary trustees must have regard to the rights and interests of all parties interested: *Raby v. Ridehalgh*, 7 De G. M. & G. at p. 109; *Re Dick*, [1891] 1 Ch. at p. 431, not of one particular person (*e.g.* the tenant for life) and if they vary an existing investment must have at least some reason to show for doing so: see 49 Sol. J. 255.

Power to vary.

(k) Where the conveyance in trust for sale comprises enfranchised copyholds, it depends upon the contract with the purchaser whether they are sold discharged from or subject to the manorial incidents and other rights of the Lord of the Manor of which they were formerly parcel, and whether the right of the lord to the mines and minerals is to be acquired by the trustees or the purchaser or to be left in the lord.

Trustees for sale have power under s. 28 of the L. P. Act, 1925, and s. 73 (1) (vi), (vii) and (viii) of the S. L. Act, 1925, to apply capital money in their lands in redeeming these rights or in redeeming a compensation rent charge.

BENEFICIAL TRUSTS.

Trusts of
hus-
band's
fortune
for hus-
band and
wife (b)
succes-
sively for
life.

Trusts of
wife's
fortune
(d) for
wife and

Method
to be
adopted
in defin-
ing the
fund.

1. THE TREES shl pay the income of the said — (a) & the ppty for the time being representing the same (hrinar called the husbd's fortune) (a) to the husbd during his life. And after the death of the husbd shl pay the income of the husbd's fortune to the wife if surviving during her life witht power of anticion.

2. THE TREES shl pay the income of the said — (c) & the ppty for the time being representing the same (hrinar called the wife's fortune) to the wife during her life witht power of

(a) Where only one fund is constituted, the several items of property brought into settlement will either be described specifically as in *f. 2 supra*, p. 512, or referred to generally as "the said resspe trust premes," and with the property for the time being representing the same will be designated "the trust fund." Where there are two funds, the several items of property brought into settlement by the husband will be similarly described or in appropriate cases may be distinguished as "the ppty specified in the — schedule hereto," "the ppty first hrinbf assigned" &c., and with the property for the time being representing the same will be designated "the husband's fortune," as in the text. Whatever phrase is adopted as a designation of the fund should be strictly adhered to throughout the draft.

(b) If the wife's income is to be reduced on a second marriage, the following proviso will effect that end without any alteration in the rest of the settlement, "PROVD always that if the wife shl marry again, the income of a moiety only of the husbd's fortune shl thenceforth durg the remr of her life be pd to her, & the other moiety & the income throf shl be held by the trees Upon the same trusts & with & subjt to the same powers & provons as the same wd have been subjt to or held upon if the wife were then dead."

(c) A similar method of describing the several items of property brought into settlemnt by the wife will be adopted as indicated in note (a) *supra* in reference to property brought into settlement by the husband.

(d) The effect of s. 19 of the M. W. P. Act, 1882, as explained by *Re Armstrong*, 21 Q. B. D. at p. 270; *Hancock v. Hancock*, 38 Ch. D. at p. 88; *Stevens v. Trevor-Garrick*, [1893] 2 Ch. 307; *Buckland v. Buckland*, [1900] 2 Ch. 534; *Re Crook's Settlement*, [1923] 2 Ch. 339, is that, apart from the Act of 1907, every settlement or agreement for a settlement of the property of a married woman is to be construed and take effect exactly as if the Act had not been passed, except that the wife's interests

Con-
struction
of mar-
riage
settle-
ments.

anticipon (e). And after the death of the wife sh^l pay the income of the wife's fortune to the husbd if surviving during his life. husband successively for life.

3. DURING THE joint lives of the husbd & wife the trees sh^l pay the income of the sd — and the ppty for the time being First life interests to husband and

(whether in income or capital) are her separate estate, whether so stated or not : *Re Lumley*, [1896] 2 Ch. 690 ; but property not expressly given to her for her separate use is not made her separate estate by the Act if the effect would be to prevent it being bound by the settlement : *Re Whitaker* 34 Ch. D. 227. The effect of s. 2 of the M. W. P. Act, 1907, is to invalidate a settlement made after 1907 by a husband or intended husband, whether before or after marriage, in respect of his wife's property, unless it is executed by the wife, if of full age, or confirmed by her after she attains full age. If she dies an infant any covenant or disposition by the husband contained in the settlement will bind any interest in her property to which he may become entitled on her death, and which he could have bound if the Act had not been passed.

Prior to the Act of 1882 it was the practice to settle any interest coming to the wife in possession during the coverture to her separate use without power of anticipation, but any interest which she might take in remainder or reversion after the husband's death, such as a life interest or the ultimate reversion in default of issue of the marriage, was not usually so settled. So far as personal estate was concerned, this was immaterial, as such an interest, being a reversionary *chose in action*, could not be disposed of at common law, and if it arose under the wife's own marriage settlement was excepted from the Married Women's Reversionary Interests Act, 1857, enabling a married woman to dispose of such an interest by deed acknowledged with the concurrence of the husband ; but an interest in real estate, such as a jointure rent-charge, might have been disposed of by the wife with the concurrence of the husband by deed acknowledged. See generally as to reversionary interests of married women, Withers on Reversions, 32 *et seq.* Reversionary interests.

It is important to remember that any interest taken by the wife under the settlement, whether in real or personal estate, and whether in possession or not, may be disposed of by her as a *feme sole*, unless she is expressly restrained from anticipation ; hence it is desirable that such a restraint should be imposed (as it clearly may be) whether the interest is capable of coming into possession during the coverture or not, in all cases in which it is desired to protect the wife against marital influence. The restraint will prevent her from acquiescing in a breach or trust by the tenant for life in possession where she has a reversionary life interest, and she may recover the loss from the estate of the first tenant for life at his death : *Re Eyre-Williams*, [1923] 2 Ch. 533. Restraint on anticipation.

In these forms express words creating the separate use are omitted, but a restraint on anticipation is inserted in all such cases. Where the wife takes

(e) A married infant can give a valid receipt for all income including statutory accumulations of income made during minority : L. P. Act, 1925, s. 21.

wife
respec-
tively,
and life
interest
to sur-
vivor (a).

representing the same (hriinar called the husbd's fortune) to the husbd & his assns, & shl pay the income of the sd — & the ppty for the time being representing the same (hriinar called the wife's fortune) to the wife, & after the death of such one of them the husbd & wife as shl first die shl pay the income of the husbd's fortune & the wife's fortune to the survor of them & his or her assns during his or her life, but so that during coverture the life interests hby given to the wife shl be witht power of anticipon.

Second
life in-
terest to
husband
con-
tingent
on there
being
issue.

4. AFTER THE death of the wife the trees shl pay the income of the wife's fortune to the husbd if surviving or his assns during his life so long as any issue of the intended marre shl be living (b).

Second
life in-
terest to
wife de-
termin-
able on
re-mar-
riage (c).

5. AFTER THE death of the husbd the trees shl pay the income of the husbd's fortune to the wife during her widowhood, but witht power of anticipon during the intended coverture, & if the wife shl survive the husbd & marry again the trees shl during the then residue of her life hold the income of the husbd's fortune Upon the trusts & for the pposes upon & for wch the same wd for the time being be held if the wife were then dead.

several interests under the settlement, it may be convenient to effect this by one clause, instead of repeating it in each case, see *post*, p. 534, f. 27.

Power of
Court to
remove
restraint
on antici-
pation.

The Court is empowered by the L. P. Act, 1925, s. 169, to bind the interest of a married woman notwithstanding a restraint on anticipation; and by the T. Act, 1925, s. 62, to impound such an interest for the indemnity of a trustee where the married woman has instigated a breach of trust: see Vol. I., p. 90, note. As to the effect of the Treaty of Peace Order, 1919, upon a restraint on anticipation, see *Public Trustee v. Wolf*, [1923] A. C. 544.

Estate
duty.

(a) The funds will not both become liable to estate duty on the death of whichever of the husband and wife dies first: *Att.-Gen. v. Wood*, [1897] 2 Q. B. 102; *Att.-Gen. v. Glossop*, [1907] 1 K. B. 163; and see Vol. I., p. 90.

(b) Where only one fund is settled continue "and after the death of the wife and subject to the trust hriinbfe deold in favour of the husbd shl stand possessed, &c.

(c) The Deceased Wife's Sister's Marriage Act, 1907, does not affect the rights of property acquired before the commencement of that Act (28th August, 1907). Hence, where a widow married her deceased sister's husband before that date, she did not cease to be a widow within the meaning of this clause: *Re Whitfield*, [1911] 1 Ch. 310; *Re Springfield's Settlement*, 38 T. L. R. 263.

6. DURING THE joint lives of the husband & wife the trees sh^l out of the income of the sd — & the ppty for the time being representing the same (hrinar called the wife's *or* "husbd's" fortune) pay an annuity of £ — to the wife witht power of antieipon, such annuity to commence from the solemnison of the intended marre & to be payable on the — day of —, &c., *or* "on the usual qrtr days," the first paymt throf to be made on such of the sd days as sh^l happen next after the intended marre & sh^l during such joint lives pay the residue of the sd income to the husbd & his assns.

Annuity to wife during joint lives of husband and wife without anticipation and residue of income to husband.

7. (i.) AFTER THE death of the husbd the trees sh^l out of the income of the husbd's fortune pay to the wife if surviving an annuity of £ — wch she sh^l not have power to anticipate during the intended coverture, such annuity to commence from the death of the husbd & to be payable on the usual quarter days, the first paymt *or* an apportioned pt throf to be made on such of the sd days as sh^l happen next after the death of the husbd.

Annuity to wife out of income of husband's fortune.

(ii.) The trees sh^l hold the residue of the same income Upon the trusts & for the pposes upon & for wch the same wd for the time being be held if the wife were then dead.

8. (i.) THE TREES sh^l hold the income of the sd — & the ppty for the time being representing the same (hrinar called the

Determinable first life interest to husband (a). As to determinable life interests.

(a) The protective and discretionary trusts are declared by s. 33 of the T. Act, 1925, and correspond to the old forms of determinable life interests which used to be inserted expressly in settlements and wills. They apply to any interest in income whether in possession or remainder. The section does not operate to validate any trust which would if contained in an instrument creating the trusts be liable to be set aside. The old law as to the validity of such trusts is therefore still important: see Elph. Introd., 7th ed., 439; Vaizey on Settlements, 947; 33 Sol. J. 767; Norton on Deeds, 344. An absolute interest in possession of property cannot be made determinable owing to the repugnancy: *Re Dugdale*, 38 Ch. D. 176. The following remarks apply to life and reversionary interests only. It must be remembered that a man cannot settle his own property so as to take an interest determinable or defeasible on his *bankruptcy*: *Higinbotham v. Holme*, 19 Ves. 88; *Re Burroughs-Fowler*, [1916] 2 Ch. 251; 3 Dav. Prec., 3rd ed., 135; 60 Sol. J. 739 (*secus*, where the settlement is made under a joint power of appointment given to the bankrupt and another person under a previous settlement to which the bankrupt was not a party: *Re Ashby*, [1892] 1 Q. B. 872); but he can take an interest in his own property determinable on *voluntary alienation*: *Brooke v. Pearson* 27 Beav. 181; *Knight v. Browne*, 30 L. J. Ch. 649; *Re Perkins*, [1912] W. N. 99; and even on involuntary alienation by process of law in favour of a judgment

husband's fortune) on protective trusts for the husband during his life (b).

creditor: *Re Detmold*, 40 Ch. D. 585; and he can be one of the objects of a discretionary trust, such as is implied by s. 33 (1) (ii), even though he is himself the settlor, as between himself and other beneficiaries, whether the trust is or is not preceded by a determinable life interest in his favour, if in this case the bankruptcy does not supervene before the determinable life interest has otherwise ceased: *Holmes v. Penney*, 3 K. & J. 90; *Re Potts*, [1893] 1 Q. B. 648. He can also take an interest determinable on bankruptcy as well as voluntary alienation in property settled by his wife or any third person: *Lockyer v. Savage*, 2 Stra. 947; *Ex p. Hinton*, 14 Ves. 598; *Kearsley v. Woodcock*, 3 Hare, 185; *Ex p. Eyston*, 7 Ch. D. 145. If bankruptcy supervenes before the forfeiture by assignment, &c., the property is vested in the trustee in bankruptcy and the clause can have no further effect: *Re Burroughs-Fowler* [1916] 2 Ch. 251; *secus*, if such forfeiture happens first.

A forfeiture is incurred by a receiving order (whether followed by adjudication: *Re Sartoris*, [1892] 1 Ch. 11; or not: *Re Laye*, [1913] 1 Ch. 298); by a petition followed by adjudication: *Re Cotgrave*, [1903] 2 Ch. 705; by an order made in an action for divorce: *Re Carew*, 55 Sol. J. 140 (but consider *Lorraine v. Lorraine*, [1912] P. 222); and in some cases (as under the statutory trust) by a mere attempt to charge: *Re Porter*, [1892] 3 Ch. 481; *Re Adamson*, 57 Sol. J. 610; *Re Evans*, [1920] 2 Ch. 304. Forfeiture is not, however, incurred by a garnishee order in respect of income actually accrued: *Re Greenwood*, [1901] 1 Ch. 887; nor by a direction to trustees to pay a creditor out of such income: *Durran v. Durran*, 91 L. T. 819; nor by an act purporting to make a charge *in futuro* which was cancelled before the charge took effect: *Re Mair*, [1909] 2 Ch. 280. Neither is forfeiture incurred by an order appointing a receiver of the life interest with a direction to pay the income towards satisfaction of a judgment debt where nothing had been done under the order: *Re Beaumont*, 103 L. T. 124; nor by an order in lunacy appointing a receiver of the life interest, for the receiver is the statutory agent of the life tenant, and a charge by the life tenant after the order is void: *Re Marshall*, [1920] 1 Ch. 284; nor where a man entitled to a life interest, forfeitable if he attempted to dispose of it, assigned it to trustees on trusts under which he himself was the beneficiary: *Re Tancred*, [1903] 1 Ch. 715.

As to the release of a life interest in a sum advanced under a power, see *Re Hodgson*, [1913] 1 Ch. 34.

The forfeiture occurs at the instant of assignment, so that cancelling the assignment is of no avail: *Re Baker*, [1904] 1 Ch. 157. The destination of any instalment of the income is determined at the moment when it accrues due or is in the hands of trustees ready for application: *Re Sampson*, [1896] 1 Ch. 630; *Re Jenkins*, [1915] 1 Ch. 46. As to the effect of a second bankruptcy, see *Re Johnson Johnson*, [1904] 1 K. B. 134.

Questions have arisen upon the express wording of trusts of this nature

As to
express

Deter-
minable
life in-
terest to
wife.

(b) If the wife takes a first determinable life interest in her own fortune continue, "& so that during any coverture such income shl be witht power of anticipon" and make necessary verbal alterations.

(ii.) The trustees shd not be liable or responsible for paying the sd income to the husbd or permitting him to receive the same after [the failure or] determinon during his life of the trust hribf declared in his favour unless & until the trustees shd have received express notice of the act or event causing such [failure or] determinon.

Trustees' indemnity (c).

9. (i.) AFTER THE death of the wife the trustees shd hold the sd income upon protective trusts for the husband durg his life.

(ii.) *Trees indemnity, sup. f. 8* (ii.).

Determinable life interest to husband in remainder (d).

as to whether a forfeiture was incurred by a bankruptcy which was afterwards annulled: see *White v. Chitty*, L. R. 1 Eq. 372; *Lloyd v. Lloyd*, L. R. 2 Eq. 722; *Metcalf v. Metcalf*, [1891] 3 Ch. 1; *Re Loftus-Otway*, [1895] 2 Ch. 235; *Re Hayward*, [1897] 1 Ch. 905; *Re Anderson*, [1911] 1 K. B. 896:—in the last two cases the bankruptcy was colonial, the domicile of the beneficiary English.

wording of trusts.

The discretionary trusts in favour of the husband, wife, children, and remoter issue or if none the persons who would be entitled to the income if the principal beneficiary were dead are set out in the T. Act, 1925, s. 33 (1) (ii) (a) and (b), and correspond to similar trusts which were formerly expressly inserted. Where trustees pay income under a discretionary trust the property so paid may become liable to succession duty or, in the case of a will, legacy duty: *A.-G. v. Wade*, [1910] 1 K. B. 703. It should be borne in mind that a discretionary trust of this kind cannot operate if the settlement is made under a special power of appointment, as it would be a delegation of the power: see *Chester v. Chadwick*, 13 Sim. 102.

Discretionary trusts.

Trustees may sometimes be placed in considerable difficulty in administering such a discretionary trust, since after an assignment by the tenant for life extending to all his interest present and future under the settlement, they could not safely make any payment to him directly, nor, as it seems, by paying his bills, as the money so applied would, the moment it was appropriated for the purpose, pass by the assignment and belong to the assignee: *Re Coleman*, 39 Ch. D. 443; *Re Neil*, 62 L. T. 649; and this would apply equally to the bankruptcy of the tenant for life, even, as it seems, after he obtains his discharge (see *Re Ashby*, [1892] 1 Q. B. at p. 877), unless the principle of *Lee v. Olding*, 2 Jur. (N. S.) 850; and *Re Vizard*, L. R. 1 Ch. 588, applies. The income may, however, be applied by the trustees for the maintenance of the tenant for life after his bankruptcy: *Re Bullock*, 64 L. T. 736.

Difficulties may occur on the husband's bankruptcy where the settlement contains, either expressly or by implication, a clause of this nature and part of his fortune has been spent in the purchase of a house under a power in the form, *post*, p. 544; see 48 Sol. J. 240.

In the absence of express provision a majority of the trustees cannot bind the minority: *Re Roth*, 74 L. T. 50; unless the trust is of a public (*Wilkinson v. Malin*, 2 Tyrw. 544), or charitable (*Re Whiteley*, [1910] 1 Ch. 600), nature.

Decision of a majority of trustees.

(c) See *Re Long*, [1901] W. N. 166.

(d) S. 33 of the T. Act, 1925, covers the case of a forfeiture being incurred during the existence of a prior life interest.

Provision
for cesser
of for-
feiture.

10. (i.) If & so often as on any day occurring after the failure or determinon of the intt of the husbd in the trust fund as afsd the whole of the sd income if hrinbfe made payable absolutely to the husbd during the whole of his life (a) wd again belong to & be payable to him alone during the residue of his life for his own absolute use & benefit free from incumbces, then the trees shl hold the sd income accruing after such day Upon the trusts (including the provon determining the trusts in his favour of the same income) upon wch the same wd for the time being be held if the trusts of such income had not [failed or] determined.

Events in
which
forfeiture
is not to
take
place.

(ii.) The trusts of the sd income in favour of the husbd shl not [fail or] determine or be prevented from recommencing by reason or on acct of an assnmt or charge made by the husbd under the power next hrinar contained [or under the power to make a settlemnt on his future marre hrinar contained] or any consent to or exercise of the power of advancemt applicable hereto or applicable to any apptmt hby authorised.

Power to
husband
to charge
income in
favour of
children
(b)

(iii.) The husbd may with the previous consent in writing of the trees assn or charge the same income or any pt throf during the residue of his life or any less period to or in favour of any child or chln of the intended marre who shl have attained the age of twenty-one yrs or being female shl have married bfe or shl marry within six calr months after such assnmt or charge.

Trust
after
bank-
ruptcy,
&c., of

11. AFTER THE [death of the wife & the failure or] determinon durg the life of the husbd of the trust hrinbfe declared in his favour the trees shl durg the remr of the life of the husbd hold the sd income Upon the trusts & for the

(a) For a life interest in remainder say "after the death of the wife."

Power to
trustees
to dis-
pense
with for-
feiture
and re-
straint
on antici-
pation.

(b) Instead of this form power might, in a proper case, be given to the trustees to dispense with the forfeiture clause and also with the wife's restraint on anticipation as in the following form:—

"The trees may at any time or times if in their absolute discron they shl deem it beneficial by deed dispense wholly or partially with the provons for forfeiture in the case of the life intt of the husbd & for the restraint on anticipon in the case of the wife hrinbfe contd or either of such provons."

poses upon & for wch the same wd for the time being be held if the husbd were then dead.

12. DURG THE life of the sd, *settlor*, the trees shl pay or apply the income of the ppty hby settled by him or so much throf as the trees in their absolute discrion shl think fit, unto or for the maintee or orwise for the benefit of the followg psons, namely, the sd, *settlor*, & his wife & issue, & the psons or pson interested under the trusts hrinar declared to take effect after the death of the sd, *settlor*, or such one or more of such psons as the trees in the like discrion shl think fit, & shl hold so much of such income as they shl not pay or apply in the exercise of the discrionary trust or power afsd upon the like trusts as if the sd, *settlor*, were dead.

husband during his life, where there is no discrionary trust (a). Short trust giving settlor protected life interest (b).

13. THE LIFE intt of the husbd in the husbd's or "wife's" fortune shl be subjt to & charged with the obligon of providg out of the income throf a suitable residee & maintee for the wife (d), & such of the chln of the intended marre as shl for the time being be under the age of twenty-one yrs & unmarried, in priority, unless the trees shl orwise expressly determine, to any other fund applicable for that ppose, but witht liability to acct so long as the husbd shl duly provide such residee & maintee [& shl also be subjt to & charged with the obligon of

Provision charging settlor's life interest with maintenance of wife and children (c).

(a) If the husband is not to take the protected life interest afforded by incorporating the whole of s. 33 of the T. Act, 1925 (which protection, however, would usually be according to the intention), this provision should, in general, be inserted in preference to the trusts for the children being accelerated, which would involve an alteration in the common forms of those trusts; whereas the clause in the text by filling up the gap caused by the forfeiture of the husband's life interest avoids the necessity for any such alteration. This clause will not raise the difficulty as to children born after the bankruptcy, which occurred where the form was differently worded, in *Re Bedson*, 28 Ch. D. 523. As to the effect of the omission of this clause, see *Re Akeroyd*, [1893] 3 Ch. 363. Subsequent interests would not be accelerated by merely providing that the trust for payment of income to the life tenant should on his bankruptcy cease and determine in the same manner as if he were then dead: *Re Cooper*, 61 Sol. J. 444.

(b) This trust (not preceded by a determinable life interest) is a mode of securing a protected life interest to the settlor himself: see *Holmes v. Penney*, 3 K. & J. 90, and *ante*, p. 517, note (a).

(c) This form may be adopted in lieu of the last as a mode of protecting the life interest of the settlor himself against creditors, see *ante*, p. 517, note (a); and as to the clause in the text, see *Carr v. Living*, 33 Beav. 474; *Re Booth*, [1894] 2 Ch. 282. See also the form of trust for an improvident person, *post*, pp. 776, 792, note, and 818.

(d) If the husband takes the second life interest, the provision for the wife will of course be omitted.

makg such yrly or other periodical allowce (if any) as the trees or "a majority of the trees for the time being" (e) shl in their absolute discrion from time to time in writg direct, for the maintce & support of such of the chln of the intended marre as shl have attained the age of twenty-one yrs or being females shl have married under that age, & shl in the opinion of the trees require so to be maintained, but so that it shl not be obligatory upon the trees to give any such direction as last afsd, & that no adult or married child of the intended marre shl (in the absence of any such direction) have any claim for maintce out of the income of the husbd's or "wife's" fortune. Provd that if the husbd shl assn or release his life intt in the whold or any pt of the income of the trust premes to any child or chln of the intended marre, such child or chln shl hold the income so assned as afsd discharged from the provons hrinbfe contd for providg a suitable residge for & maintaing the wife & infant chln, & of makg an allowce for any adult or married chln].

Power of
appoint-
ment
among
children
or
remoter
issue.

14. AFTER THE death of the survor of the husbd & wife [husbd, or, "wife"] (f) the trees shl stand possessed of the capl & future income of the husbd's fortune & the wife's fortune In trust for all (g) or such one or more exclusively of the others or other (a) of the chln or remoter issue (b)

(e) See *ante*, p. 519, note.

(f) If the husband has been given a life interest in the wife's fortune contingent on there being issue as in f. 4, *ante*, p. 516, say "After the death of the wife the trees shl stand possessed of the capl & future income of the wife's fortune subjt to the determinable life interest (if any) of the husbd therein and after the death of the survor of the husbd & wife shl stand possessed of the capl & future income of the husbd's fortune, &c."

(g) Where extreme brevity is desired continue "or any of the chln or remoter issue of the intended marre in such shares & mner in all respts as the husbd & wife shl by any deed, &c.," *as in text*. But this form will not enable the appointors to give to the trustees powers of maintenance: *Re Greenslade*, [1915] 1 Ch. 155; although the statutory power will not be affected and will in most cases be sufficient.

As to ex-
clusive
powers of
appoint-
ment.

(a) The words expressly authorising an exclusive appointment are usually inserted, although they are not now essential. See s. 158 of the L. P. Act, 1925, re-enacting the Powers of Appointment Act, 1874, and doing away with the necessity which previously existed (notwithstanding the Act 11 Geo. 4 & 1 Wm. 4, c. 46), of appointing a nominal sum to, or leaving it unappointed for, the excluded objects, where the power was non-exclusive: *Goodeve*, R. P., 5th ed., 288; *Re Hughes*, [1921] 2 Ch. 208.

As to ex-

(b) It is so generally desirable that the power should extend to grandchildren,

of the intd marre, [such chln or issue to take vested intts not later than twenty-one yrs from the death of the survor of the husbd & wife (c),] at such age or time, or respective ages or times if more than one, in such shares (d), & with such trusts for their respective benefit & such provons for their respective advancemt (e) (either after the death of the survor of the husbd & wife, or durg the lives or life of them, or the survor of them, with their, his, or her, consent [in writg]), & maintce & educon, at the discron of the trees or of any other pson or psons, as the husbd & wife shl by any deed or deeds revocable or irrevocable jointly appt : AND IN DEFAULT of & subjt to any such apptmt, as the survor of them the husbd &

so as to enable the parents to provide directly (instead of through the medium of the trust in default of appointment) for the family of a deceased child, or to settle the share of a child on him or her for life with remainder as far as the rule against perpetuities will permit) to his or her issue, that the extension of the power in this manner may usually be assumed to be proper without special instructions : see 3 Dav. Prec., 3rd ed., 144 ; Vaizey, 1196.

tending power to grand-children.

Under the Lunacy Act, 1890, s. 128, the Judge in Lunacy can authorise the person appointed under s. 116 to exercise the power of a committee of the lunatic under the Lunacy Act, 1908, s. 1, to concur in exercising a joint power of appointment : *Re A*, [1904] 1 Ch. 328. As to the exercise of powers vested in a lunatic not so found, see Lunacy Act, 1908, s. 1.

Powers vested in lunatic.

(c) The words restricting the power within the rule as to perpetuities, are not necessary, as the power, whether so expressed or not, will operate with due regard to the rule. S. 163 of the L. P. Act, 1925, saves a gift in a will settlement or other instrument to a beneficiary or class of beneficiaries whose interest is dependent upon the attainment of an age exceeding 21 years and also saves a gift over after any such limitation by substituting the age of 21 years for the age expressed in the instrument and so vesting the property as if the age of 21 years had been expressed in the instrument. See also Elph. Introd., 7th ed., 443. Some such words are, however, commonly inserted, and may prove useful by way of reminder of the rule when the power is exercised. A power which may possibly become exercisable at a time beyond the perpetuity limit has been held to be void *ab initio* : *Re De Sommery*, [1912] 2 Ch. 622 ; 29 L. Q. R. 19 ; 30 *ib.* 71.

Perpetuities.

(d) See *Re Hughes*, [1921] 2 Ch. 208.

(e) Where an express power of advancement applies only to shares taken in default of appointment, the power of appointment should authorise the insertion of a power of advancement in an appointment to infants ; as it enables an advancement not authorised by the ordinary power to be made in respect of an appointed share : *Re Greenslade*, [1915] 1 Ch. 155. The statutory power of advancement contained in s. 32 of the T. Act, 1925, applies to all capital money subject to a trust, notwithstanding that the share of the beneficiary to be advanced may be defeated by the exercise of a power of appointment.

wife shl in like mner, or by will or codl appt (f). AND IN DEFAULT of & subjt to any such apptmt.

Usual
trust in
default
(g).

15. IN TRUST for all or any the chln or child of the intended marre, who being male attain the age of twenty-one yrs, or being female attain that age or marry (h), & if more than one, in eql shares.

Trust for
children
excluding
child
taking
estate.

16. IN TRUST for all or such one or more exclusively of the others or other of the chln or remoter issue of the intended marre, [other than (i) a son, grandson, daur, or granddaur for the time being indefeasibly (k) entitled to the first intt in tail [male or in tail], either in posson or remr under a settlemt or trust instrumt, dated, &c., or, "the will, dated, &c., & proved,

Restric-
tion on
power of
appoint-
ment.

(f) It is sometimes desired that the following proviso should be added to the power of appointment: "PROVD ALWAYS that no child [or other issue] of the intended marre shl (except by way of advancemt) take or acquire an absolutely vested & transmissible intt in the capl of the trust premes under any apptmt in psuance of either of the powers hrinbfe contd, unless such child [or other issue] shl being male attain the age of twenty-one yrs, or being female attain that age or marry, & any apptmt infringg this provon shl not on that acct be void, but shl take effect subjt to such provon."

(g) This is the usual form of trust in default of appointment, but occasionally the latter half of the next form may be required instead.

(h) Add here, if so intended, "with the consent of their or her parents or parent, or guardians or guardian." Under a trust in this form a daughter marrying under age without consent would, if she attains twenty-one, become entitled. For a form of trust excluding a daughter so marrying, see *post*, p. 799, f. 6, and see *ante*, p. 501, note (b).

Exclusion
of son
succeed-
ing to
title,

(i) It is better to insert the usual power of appointment extending to all the children. When a son succeeding to a peerage or baronetcy is to be excluded, say, "other than & except any son or sons who bfe his or their attaing the age of twenty-one yrs, shl inherit or become heir apparent to the earldom of — [the baronetcy now vested in —]."

or be-
coming
heir male.

Sometimes "an eldest or other son who before attaining the age of 21 years shall become the heir male of the body of X." is excluded. This is not expedient. As to the meaning of "eldest son" see Norton on Deeds, 429; *Law Union, &c. Co. v. Hill*, [1902] A. C. 263; *Re Wrottesley*, [1911] 1 Ch. 708; *Re Cavendish*, 56 Sol. J. 344.

(k) Where the eldest son of the intended marriage will not necessarily be the first tenant in tail, this word should be inserted, and it should always be inserted in the case of daughters; but if there is a name and arms clause or a shifting clause in the settlement of the real estate, a child becoming entitled to the estate should be excluded from sharing in spite of his or her estate being defeasible under either of those clauses: see forms, *post*, p. 654, note.

&c., of X." (l),] at such age, &c., *as in f.* **14** : AND IN DEFAULT of, & subj't to any such apptmt In trust for all or any the chln or child of the intended marre other than (a) the first or only son or any other son or sons, who before his or their resply attaing the age of twenty-one yrs shl become [indefeasibly] entitled, or any daur or daurs who before her or their attaing that age or marryg shl become indefeasibly entitled to the first intt in tail [male or in tail] under the sd settlem't or trust instrum't [will], who being male, &c., *as in last form.* And if there shl be no child of the intended marre (other than & except as afsd), who being male shl attain the age of twenty-one yrs, or being female shl attain that age or marry, then In trust for such one or more of the sd excepted class of chln as being male shl attain, &c., *as in last form.*

17. No CHILD who or whose issue shl take any pt of the ppty hby settled under an apptmt by virtue of the power [either of the powers] hrinbfe contd shl, in default of apptmt to the contrary, be entitled to any share of the unappted pt throf witht bringg the share or shares appted to him or her or to his or her issue into hotchpot & accounting for the same accordgly.

Hotch-
pot clause
(b).

18. No CHILD who or whose issue shl take any pt of any ppty hby settled or agrd to be settled under an apptmt by virtue of any power hrin contd shl, in default of apptmt to the contrary, be entitled to any share of the unappted pt of any ppty hby settled or agrd to be settled witht bringing the share or shares appted to him or her or to his or her issue into hotchpot & accountg for the same accordgly.

The same
where a
fund is
settled by
reference
(b).

19. THE TREES shl (d) after the death of the husbd & wife Main-

(l) For a Scottish entail, say, "entitled as heir in entail in posson or as next heir substitute to the — Este."

(a) Where the variation in note (i), p. 524, is used say "other than as afsd."

(b) Where a fund is settled by reference the next form should be used, as the two funds do not become one fund for the purposes of the hotchpot clause: *Re Marquis of Bristol*, [1897] 1 Ch. 946; *Re Cavendish*, [1912] 1 Ch. 794; *Re Marke Wood*, [1913] 2 Ch. 574; but consider *Re Fraser*, [1913] 2 Ch. 224; and *cf. Re Campbell's Trusts*, [1922] 1 Ch. 551.

The value of an appointed share is its value at the death of the tenant for life: *Re Kelly*, [1910] 1 Ch. 78. See *Re West*, [1921] 1 Ch. 533.

(d) The maintenance clause is usually expressed, as in the text, in the form of a trust, and not a mere power; but if the father does not take a life

As to
form of
clause.

tenance
clause (e).

apply the whole, or such pt as they in their discreon shl think fit of the income (a) of the share in the trust premes to wch

interest it should be altered by substituting "may" for "shl" so as to exclude any contention that the father has a right to require an allowance out of the income, according to *Mundy v. Earl Howe*, 4 Bro. C. C. 224; but see *Re Kerrison*, L. R. 12 Eq. 422; *Wilson v. Turner*, 22 Ch. D. 521; *Re Bryant*, [1894] 1 Ch. 324. But in most cases where a mere power of maintenance is required no clause at all need be inserted and reliance can be placed on the statutory power. A proviso prohibiting the exercise of the power of maintenance so long as the father has control of the child is valid. *Re Borwick's Settlement*, [1916] 2 Ch. 304.

As to what ought to be allowed for maintenance, see *Barnes v. Ross*, [1896] A. C. 625.

The Court will not interfere with the *bonâ fide* exercise by the trustees of their discretion: *Re Lofthouse*, 29 Ch. D. 921; *Re Bryant*, *sup.*; *Re Knollys*, [1912] 2 Ch. 357.

Power of
mainten-
ance, &c.,
in the T.
Act, 1925,
s. 31.

(e) The T. Act, 1925, s. 31, provides that: (1) Where any property is held by trustees in trust for any person for any interest whatever whether vested or contingent, the trustees may at their sole discretion pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit (see *Lowther v. Bentinck*, L. R. 19 Eq. 166; *Re Breeds*, 1 Ch. D. 226) the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education or not. If the infant upon attaining full age does not obtain a vested interest in the trust property the trustees must thereafter pay him the full income of such property and any accumulation of surplus income which they may have made under the power to accumulate given by sub-s. (2) until he either obtains a vested interest or dies, or his interest fails. (2) The surplus income is to be accumulated and invested in securities authorised by the settlement or by law (as to which see *post*, p. 534, note). Such accumulations of income are held upon trust absolutely either for the person entitled to the trust fund upon his obtaining a vested interest whether by attaining the age of 21 years or marrying under that age, or for the person who on attaining 21 or marrying under that age becomes entitled to it in fee simple absolute or determinable, absolutely, or for an entailed interest. This latter trust is without prejudice to any settlement made by the infant under any statutory powers during infancy. The receipt of such last-mentioned person even though still an infant is a good discharge to the trustees: see also L. P. Act, 1925, s. 21. In any other case the trustees must, notwithstanding that the beneficiary has obtained a vested interest in the trust fund, hold the accumulations as one fund with the capital from

Variation
where
children
may be
main-
tained
as a class.

(a) Where the children may be maintained as a class, say, "income of the share or shares in the trust premes to wch any child or chln of the intended marre shl for the time being be entitled in expectey for or towards his or her maintee or educon, or towards their common maintee or educon, & may either themselves," &c.

any child of the intended marriage for the time being be entitled in expectancy under the trusts hereinbefore declared, for

which they arose for all purposes, and if they arise from settled land upon the trusts of the capital moneys of that land. During the infancy of the person contingently entitled the trustees may apply the accumulations or any part thereof as if they were income accruing in the current year. The clause does not apply where the instrument under which the interest arises came into operation before 1925: sub-s. (5). In that case s. 43 of the C. Act, 1881, is saved from repeal by the L. P. Act, 1925.

The statutory power applies to all property real or personal (see the definition of "property" in s. 68 (11)), which is vested in trustees.

The section only applies to limitations or trusts of contingent interests which carry the intermediate income of the property, including future or contingent legacies by parents or persons *in loco parentis* to their children during such period as the legacy carries interest at law. If the income is sufficient and subject to any rules of Court to the contrary such interest is to be calculated at £5 p.c.: sub-s. (3). The section also applies to vested annuities: sub-s. (4).

As to the application of the clause.

In common with all other statutory powers the power of maintenance and accumulation yields to a contrary intention expressed in the instrument creating the trust: s. 69 (2).

It was established by the cases on the old law that where the interim income would go with the capital to the infant on his attaining twenty-one, the statutory clause applies, although he has only a contingent interest: *Re Dickson*, 29 Ch. D. 331, and that it applied to the common trust (both in deeds and wills) for children as a class at twenty-one or marriage: *Re Holford*, [1894] 3 Ch. 30; *Re Faux*, 59 Sol. J. 457. The decision on the first point is now covered by sub-s. (3) *sup.*, and those on the second remain unaltered by the new law.

Application of clause to ordinary trust for children at twenty-one, &c.

A direction to accumulate the income during minorities is not such an indication of a contrary intention as to exclude the Act: *Re Thatcher*, 26 Ch. D. 426; *Re Cooper*, [1913] 1 Ch. 350.

Accumulations of income made under the Act form an accretion to capital, so that if the infant during whose minority they are made becomes absolutely entitled to the capital on attaining twenty-one, they belong to him. Although the infant is entitled only to a contingent life interest in the capital the income can be applied for his maintenance under the Act: *Re Boulter*, [1918] 2 Ch. 40, explaining *Re Dickson*, 29 Ch. D. 331, and *Re Bowlby*, [1904] 2 Ch. 685. A trust to accumulate income subject to a power to apply the same income in maintenance of an infant does not render the infant liable for super tax on the income of the accumulated fund: *I. R. v. Blackwell*, [1924] 2 K. B. 351.

Accumulations.

Where the trust estate originally comprises land, or there is a power to purchase land, s. 28 of the L. P. Act, 1925, conferring on the trustees for sale the powers of management given by s. 102 of the S. L. Act, 1925, to trustees of a strict settlement during a minority should also be considered. S. 102 of the S. L. Act, 1925, by sub-s. (5) appears to apply to cases of persons entitled to land subject to any contingency, and the powers conferred by s. 28 of the L. P. Act, 1925, have been held not to be restricted to a period of minority: *Re Gray*, [1927] 1 Ch. 242.

Management power in the case of land.

Where circumstances require it the words, "whether there is any Addition to clause.

or towards his or her maintee, educon, or benefit, & may either themselves so apply the same, or may pay the same to the guardian or guardians of such child for the ppose afsd witht seeing to the applicon throf.

Accumulation clause.

20. DURG SUCH suspense of absolute vestg as afsd, the trees shl accumulate the surplus (if any) of the same income at compound intt, by investg the same & the resultg income throf in any of the investmts hby authorised, for the benefit of the pson or psons who shl eventually become entitled to the ppal fund from wch the same shl have proceeded, & may apply the accumulons of any precedg yr or yrs in or towards the maintee or educon of the child for the time being presumptively entitled thereto (b) in the same mner as such accumulons might have been applied had they been income arisg from the origl trust fund in the then current yr.

Maintenance and accumulation clause.
Short form.

21. THE TREES shl at their discron apply all or any pt of the income of the share to wch any pson shl be entitled in expectcy, & to wch any such pson may under the trusts hrinbfe contd become entitled in posson for his or her maintee educon or benefit in such mner as the trees may think fit, & shl invest the surplus income (if any) throf in any investmts hby authorised in augmenton of the capl of such share.

Advancement clause (c).

22. THE TREES may at any time or times after the deaths of the husbd & wife, or in their, his, or her lifetime, with their, his, or her consent in writg, raise any pt or pts not exceedg in the whole *five eighths* of the then expectant, presumptive, or

other fund applicable or any pson bound by law to provide for such maintee or educon or not," (following the words of the Act), may be added to the clause in the text after "benefit;" the words "or any pson," &c., being omitted where the father takes a life interest; see 3 Dav. Prec., 3rd ed., 180, 181, note.

Variation where children maintainable as a class.

(b) Where the children may be maintained as a class, substitute for the words, "child for the time being presumptively entled thereto," the words, "child or chln for the time being the objects of the trust for maintee & educon hrinbfe contd."

Statutory power of advancement.

(c) S. 32 of the T. Act, 1925, confers a new statutory power of advancement on trustees to be exercised at their discretion out of the capital of the trust fund or any share therein in favour of a beneficiary entitled either absolutely or contingently upon attaining any specified age or on the occurrence of any other event and whether the interest is in possession, remainder, or

vested (d) share (e) of any child or remoter issue of the intended marre in the trust premes under the trusts hrinbfe contd, & may pay or apply the same for his or her advancemt or benefit, in such mnner as the trees think fit (a).

reversion. The power may be exercised notwithstanding that the interest of the beneficiary is liable to be defeated by the exercise of a power of appointment or of revocation, or may be diminished by the increase of the class to which the beneficiary belongs. Not more than one-half of the vested or presumptive shares or interest in the trust fund may be paid by way of advancement and any such advanced sum must be accounted for upon the beneficiary attaining an absolute and indefeasible interest in the trust property. The consent in writing of any persons entitled either absolutely or contingently to a prior interest in the trust fund must be obtained if any such person is in existence and of full age. The section applies only where the trust property consists of money or securities (defined in s. 68 (13)) or of land held on trust for sale or the proceeds of such sale, and has no application where the proceeds of sale of land are at law or in equity considered as land or are applicable as capital money under the S. L. Act, 1925. The section only applies to trusts constituted after 1925. Reliance upon the statutory power will in most cases be sufficient. As in the case of other statutory powers, the power of advancement yields to a contrary intention expressed in the instrument creating the trust : s. 69 (2).

As to the advancement clause, see *Elph. Introd.*, 7th ed., 449. Alienation of or charge on his life interest by, or the bankruptcy of, the tenant for life, prevents him from consenting to an advance without the consent of the assignee or the trustee in bankruptcy : *Noel v. Lord Henley*, *McCl. & Y.* 302 ; *Whitmarsh v. Robertson*, 1 *Coll.* 570 ; *Re Cooper*, 27 *Ch. D.* 565. The Court can authorise the committee of a lunatic to consent on his behalf : *Re Nevill*, 31 *Ch. D.* 161 ; see now the Lunacy Act, 1890, ss. 116, 120, 128, and the Lunacy Act, 1908, s. 1 ; also *Re S. S. B.*, [1906] 1 *Ch.* 712, and cases there cited. As to the construction of this clause, see *Re Winch*, [1917] 1 *Ch.* 633, 638.

(d) See *Molyneux v. Fletcher*, [1898] 1 *Q. B.* 648.

(e) See *ante*, p. 523, note (e). If the words "or remoter issue" are omitted, as to which see *Re Hodgson*, [1913] 1 *Ch.* 34 ; *Re Greenslade*, [1915] 1 *Ch.* 155 ; then after the word "share" insert "whether taken under or in default of apptnt under eir of the powers hrin contd." Where a power of advancement extends to issue, it is clear that it must be exercisable over appointed shares, as well as over shares taken in default of appointment, since it is only by appointment that issue can take any interest in the funds. See Vol. I., p. 103, note (c).

(a) Trustees may raise out of land held by them on trust for sale any sum which has become payable under the trust deed or by law : *T. Act*, 1925, s. 16 ; and may create a legal mortgage ranking in priority to the trust for sale. The mortgagee is not concerned to see that the money is wanted : *T. Act*, 1925, s. 17.

Advance-
ment
out of
land.

Power to wife to assign part of her income to a child on attaining twenty-one or on its marriage (b).

Provision as to exercise of husband's powers after forfeiture (d).

23. NOTWITHSTANDING THE restraint on anticipation hereinbefore contained, the wife may by any deed or deeds revocable or irrevocable [with the consent in writing of the trustees] assign any part or parts not exceeding in the whole one moiety of the income to which she may be entitled whether in possession or remainder of the property hereby settled or agreed to be settled or of any annuity, to any child or children of the intended marriage who shall have attained the age of twenty-one years or shall have married before or shall marry within six calendar months after the date of such assignment (c).

24. DURING THE period (if any) of the life of the husband during which he shall not be entitled to receive the income of the husband's fortune [or during which after the death of the wife, he shall not be entitled to receive the income of the wife's fortune] he shall [not] be able to exercise [or concur in exercising] or to consent [or concur in consenting] to the exercise of the

(b) The ordinary power of advancement does not authorise the wife to assign to a child an annuity or life interest which she is restrained from anticipating. This form is useful if the wife becomes entitled to a life interest in realty under an after-acquired property clause as it may prevent difficulties which sometimes arise on a resettlement owing to her not being able to provide for the tenant in tail.

(c) If the wife survives the assignment for three years no estate duty will be payable in respect of the property assigned: *Att.-Gen. v. Beech*, [1899] A. C. 53; Fin. (1909-10) Act, 1910, s. 59 (i).

(d) In the absence of this provision the husband could exercise the power of appointment although he was not entitled to the income: *Wickham v. Wing*, 2 H. & M. at p. 436; *Re Master*, [1911] 1 Ch. 321.

Where the husband is not to be able to exercise the powers it will be better to add at the end of the form "except the power of appointment in favour of the children or issue of the intended marriage."

Restriction on power of appointment where life interest determinable.

Where the life interest is determinable but not protected, and the trusts for the children are to be accelerated, the continuance of the husband's power of appointment may be inconvenient; otherwise it might remain exercisable. In either case it is better to express the intention, see 3 *Dav. Prec.*, 3rd ed., 799. Where the husband takes a determinable but not protected life interest in the wife's fortune, the following clause might be added as a proviso to the power of appointment in substitution for clause 24: "but so that in the event of the husband surviving the wife, & the failure or determination in his lifetime of the trust hereinbefore declared in his favour of the income of the wife's fortune, the power lastly hereinbefore contained shall not be exercised so as to diminish the share to which any child of the intended marriage shall have become entitled by virtue of the trusts herein contained, of the wife's fortune."

powers hby conferred on him or on him jointly with the wife or on the trees [& the sd powers shl be exercisable by the pson or psons who could exercise the same if the husbd were dead].

25. DURING THE minority of the wife:—

(i.) Every trust & power hby made exercisable with her consent or with the consent of her & her husbd shl be exercisable witht her consent. Wife's powers during minority (e).

(ii.) She shl not be able to exercise any power hby vested in her other than the power of appointing new trees.

(iii.) Nothing hrin contained shl prevent the wife from giving a valid receipt for the income for the time being payable to her hrunder (f).

26. IF THERE shl be no child of the intended marre who being male shl attain the age of twenty-one yrs or being female shl attain that age or marry (a), then subjt to the trusts, powers, & provons hrinbfe declared & contd & to the powers Ultimate trusts with variations (g).

(e) As to the exercise of powers by an infant, see Sugden on Powers, 8th ed., 910.

In the absence of direction to the contrary an infant can exercise a general power of appointment by deed: *Re D'Angibau*, 15 Ch. D. 228 (discussed Farwell, 3rd ed., 141); also a power coupled with an interest if infancy is expressly dispensed with: *Re Cardross*, 7 Ch. D. 728; *Re Sutton* [1921], 1 Ch. 257; or if from its nature it is intended to be exercised during infancy: *Preston on Abstracts*, 1, 326. As to exercise of powers by infant.

(f) An infant can consent to an investment: *Re Cardross, sup.*; or give receipts: *Re Deneker*, 72 L. T. 220.

(g) This trust is framed with the object of preventing the wife from making any disposition, except by will, in favour of the husband, the power of appointment being during the coverture testamentary only, and the wife's interest in default of appointment, if she survives, being subject to a restraint on anticipation: see *ante*, p. 515, note. But the power after the determination of the coverture (which would apply not only where the husband is dead, but also in case of a divorce, see 3 *Dav. Prec.*, 3rd ed., 187; *Re Crawford*, [1905] 1 Ch. 11), is exercisable by deed or will. If it is intended to exclude the wife from making a will in favour of the husband, the following may be added after the power of appointment, "but so that such testamentary power of apptmt shl durg the intended coverture be exercisable in favour only of relations in blood of the wife," or "of psons of her blood & kindred." It is very improper to fetter the wife's power of appointment over her own property, and a solicitor acting for a young person incurs considerable risk in allowing this to be done: consider *Powell v. Powell*, [1900] 1 Ch. at p. 247; *Wright v. Carter*, [1903] 1 Ch. at p. 57. As to frame of ultimate trust of wife's property.

(a) If marriage with consent is required by the previous trusts, add, "with such consent as afsd."

by law vested in the trees & to every exercise of such respective powers, the trees shl stand possessed [of the husbd's fortune in trust for the husbd (b), & shl stand possessed] of the wife's fortune in trust for such pson or psons & for such pposes as the wife shl, while discovert by any deed or deeds revocable or irrevocable or whether covert or discovert by will or codl, appt (c); And in default of & subjt to any such apptmt, if the wife shl survive the husbd, IN TRUST for the wife (d), & durg the intended coverture witht power of anticipon, but if the wife shl not survive the husbd then IN TRUST for such pson or psons as wd have become entitled to the wife's fortune under Part IV. of the Admin of Estes Act, 1925, (e) at the death of the wife, had she died possessed throf intestate (f) & witht havg been married (g), such psons if more than one to take as tenants

(b) For trusts of the husband's fortune only, stop here; of the wife's fortune only, omit the words in this bracket.

(c) An appointment by deed under this power requires an *ad valorem* stamp: Fin. (1909-10) Act, 1910, s. 74.

(d) If the wife survives the husband and dies an infant leaving a child, the beneficial interest in the wife's fortune will devolve under s. 46 of the A. of E. Act, 1925, upon the statutory trusts declared by s. 47 of the same Act for the benefit of the child. If the child dies under twenty-one and whether male or female unmarried, the beneficial interest will devolve upon the wife's relations in the order set out *post*, p. 935.

(e) As to the resulting trust which takes effect if this clause is omitted, see *Re Connell's Settlement*, [1915] 1 Ch. 867. Trusts declared by settlements made or by wills coming into operation before 1926 in favour of next of kin by reference to the repealed Statutes of Distribution are construed as referring to those statutes other than the Intestates Estates Act, 1890, unless the contrary appears: A. E. Act, 1925, s. 50 (2).

(f) If the parties may be domiciled abroad or in Scotland, add here, "domiciled in England."

As to
frame of
ultimate
trust ex-
cluding
husband
and issue.

(g) This trust excludes not only the husband, but also any children of the marriage who may have died before attaining vested interests under the previous trusts. This was formerly necessary, otherwise the whole fund might have gone to the husband as sole next of kin of a child dying in infancy in direct opposition to the intention: *Re Smith*, [1903] 1 Ch. 373; *Re Brydone*, [1903] 2 Ch. 84; *Boyce v. Wasbrough*, [1922] 1 A. C. 425. As to the present law see note (d), *supra*. In several cases, however, trusts in this form have been construed, owing to the context, as if the words "witht havg been married," were equivalent to "unmarried," i.e., "not leavg a husbd survivg," so as to let in a child who would otherwise have been excluded: *Wilson v. Atkinson*, 4 De G. J. & S. 455; *Re Ball*, 11 Ch. D. 270; *Upton v. Brown*, 12 Ch. D. 872; *Stoddart v. Savile*, [1894]

in common in the shares (a) in wch they wd have taken under the sd statute (b).

1 Ch. 480. Cf. *Re Jones*, [1915] 1 Ch. 246, 252; *Re Hall Dare*, [1916] 1 Ch. 272 (cases on wills). It is safer, having regard to these cases, where there are no trusts for the children of the marriage or where the trusts in their favour are in an unusual form, to substitute for "witht havg been married," the words, "witht leavg the husbd, or any issue of the intended marre her survivg."

It follows that where a woman whose settlement made on first marriage contains an ultimate trust for her next of kin or in the form in the text, marries again before any child of the first marriage has obtained a vested interest in all the trust funds, or if having children by a first marriage she makes a settlement on her second marriage containing such a trust, it is expedient for her to appoint under the powers in the ultimate trust in order to prevent the trusts for persons entitled upon her intestacy from taking effect.

If there are no issue and the husband is dead, the wife can require the trust funds to be handed to her: see Farwell, 3rd ed., 64, but in *Re Davenport*, [1895] 1 Ch. 361, where the power was to appoint by will only, the power had to be released.

If the intended wife is a widow having issue by a former marriage, who are not intended to be excluded, add after "witht havg been married," "to the husbd;" see *Emmins v. Bradford*, 13 Ch. D. 493. *Boyce v. Wasbrough*, [1922] 1 A. C. 425. If relations of the half blood are to be excluded say, "In trust for such pson or psons, being relations of the whole blood of the wife, &c." and add after "intestate," "& witht leavg any relations of the half blood." The form in the text could not of course be used if the wife is illegitimate.

Variations in ultimate trust.

The ultimate trust is sometimes for the parent of the husband or wife: see *Re Donnelly*, [1913] 1 Ir. R. 177. It must be remembered that this cannot be so where such parent has exercised a special power of appointment for the purposes of the settlement, having regard to the doctrine of frauds on powers; though the insertion in that case of the ordinary trust for the persons entitled upon the wife's intestacy is not considered as open to this objection.

Under the M. W. P. Act of 1882, a married woman is for the purpose of "acquiring, holding and disposing of" her property made a *feme sole*, so that during the coverture the husband's rights are altogether excluded at law and in equity; but the Act does not purport to do more than this, and upon the wife's death without having exercised her power of disposition, its operation is spent, so that the husband's rights in this respect remain as they were before the Act: *Surman v. Wharton*, [1891] 1 Q. B. 491; *Hope v. Hope*, [1892] 2 Ch. 336; *Re Lambert*, 39 Ch. D. 626; *Re Evans*, [1910] 1 Ir. R. 95.

Effect of M. W. P. Act, 1882, on husband's rights.

(a) In the absence of any direction, the shares will *prima facie* be according to the statute: see *Re Nightingale*, [1909] 1 Ch. 385; *Re Richards*, [1910] 2 Ch. 74.

(b) In order to prevent the Crown from succeeding to the property as *bona vacantia* it is desirable to add the following words: "Provided that if but for this present proviso the wife's fortune wd devolve as *bona vacantia* under the sd pt of the sd Act the same shl in that event alone be held in trust for the husband absolutely."

General direction that wife's interests are without power of anticipation (c).

27. THE WIFE shl not have power during the intended coverture to dispose of or charge by way of anticipon any este or intt of whatsr nature & whether in posson, reversion, remr, contingency or expectancy hby given to her in the trust ppty and premes hby settled or agrd to be settled.

INVESTMENT.

PRELIMINARY NOTE.

TRUSTEES may invest in any investments authorised by the T. Act, 1925, s. 1, which includes investments authorised by the Colonial Stock Act, 1900, unless a contrary intention is expressed in the instrument creating the trust: s. 69 (2). Redeemable stocks are, in the case of some of the authorised investments, subject to the provisions of s. 2. S. 7 has reversed the old rule that authorised securities might not be held in bearer form and such securities may now be so held unless expressly prohibited. It should be noted that securities authorised under the Colonial Stock Act, 1900, are only authorised under that Act if held in inscribed or registered form and are only authorised by the T. Act, 1925, by reference to the first-mentioned Act: T. Act, 1925, s. 1 (i) (o): but nevertheless they fall within the provisions of s. 7. A colonial stock issued in the form of bearer bonds is not within the Act of 1900: see Colonial Stock Act, 1877, s. 1: and consequently not within the T. Act, 1925.

“United Kingdom.”

The expression “United Kingdom” in the Act means Great Britain and Northern Ireland: s. 68 (20). By rule 2 of S. R. & O. 1923, No. 405, references in enactments passed before the establishment of the Irish Free State, *i.e.* 6th December, 1922, are in application of the enactments to any part of Great Britain and Ireland other than the Irish Free State to be construed as exclusive of the Irish Free State. There appears to be no definition of the expression when used in instruments other than Acts of Parliament.

As to the investments that the Public Trustee may make or retain, see P. T. Rules, 1912, r. 17.

The investments authorised by statute are constantly changing, hence care should be taken that a proposed investment is authorised at the time of making it. In practice this is usually done by referring to a broker's list. As regards colonial stock, notice of compliance with the Act of 1900 is inserted in the London and Edinburgh Gazettes, and a yearly list is given in Burdett's Stock Exchange Official Intelligence.

Where trustees continue to hold an investment which has ceased to be authorised they are not liable for breach of trust; T. Act, 1925, s. 4. As to the effect of a trustee investing trust moneys in an unauthorised security and restoring the amount to the trust fund, see *Slade v. Chaine*, [1908] 1 Ch. 522; *Re Hoyles*, [1912] 1 Ch. 67; and Withers on Reversions, 91.

Trustees having power to invest in real securities may also (unless expressly forbidden) invest in the manner provided by s. 5 of the Act. Sub-section 4 of that section (authorising investment in nominal debentures).

(c) This form may be used where the wife takes several interests under the same settlement.

tures or stock issued under the Local Loans Act, 1875), only applies to the enlargement of express powers of investment in debentures or debenture stock: *Re Tattersall*, [1906] 2 Ch. 399; and it is apprehended that with the exception of subs. (1) (a) and (b) the powers conferred by the section are qualified or conditional; see Ellis, 6th ed., 47.

Where trustees lend money on mortgage, s. 8 (1) of the Act exonerates them from liability by reason only of the proportion borne by the loan to the value of the property at the time the loan was made, if it appears to the Court that they acted on the report of an able practical surveyor or valuer instructed and employed independently of any owner of the property although not in practice in the locality, provided the loan does not exceed two-thirds of the value of the property as stated in the report, and that it was made under the surveyor's or valuer's advice. As to how far the trustees may rely on the report of the surveyor, see *Re Solomon*, [1912] 1 Ch. 261; compromised, [1913] 1 Ch. 200.

Sub-section 2 provides that where trustees lend money on the security of leaseholds, they may dispense either wholly or partly with the production or investigation of the lessor's title, and sub-section 3 gives them power where they act with prudence and caution, and either on a purchase or in lending money on the security of any property, to accept a shorter title than that which a purchaser might in the absence of special contract require.

Section 9 provides that where trustees advance too much on a security which would at the time of the advance have been a proper investment for a smaller sum than that actually advanced, the security shall be deemed to be an investment for the smaller sum, and the trustees shall only be liable for the excess. Amount of advance.

When trustees lend on the security of trade premises it is advisable that they should not advance more than one half of the value of the property, but there is no fixed rule to this effect: *Palmer v. Emerson*, [1911] 1 Ch. 758.

The Act (as above stated), provides that the proportion shall not exceed two-thirds in any case, but the valuer must consider the value of the property and how much may be advanced on it independently of this rule: *Re Solomon*, *sup.*

With regard to the valuation, it was held that s. 8 of the T. Act, 1893, re-enacted by s. 8 of the Act of 1925, imposed no statutory obligation on trustees to take an independent valuation, and that neglect in doing so did not exclude the remedy given to trustees by s. 3 of the Judicial Trustees Act, 1896, now repealed and re-enacted by s. 61 of the T. Act, 1925: *Palmer v. Emerson*, *sup.*; but trustees should never dispense with a valuation, and they should take care that the surveyor or valuer is chosen, paid and employed by them, and is independent of the mortgagor (see *Re Somerset*, [1894] 1 Ch. at p. 253; *Re Stuart*, [1897] 2 Ch. 583; *Re Solomon*, *sup.*; Elph. Introd., 7th ed., 426), and should see that his report (for which he should receive a proper fee not dependent on whether the mortgage is carried out or not: see *Smith v. Stoneham*, [1886] W. N. 178; *Marquis of Salisbury v. Keymer*, 25 T. L. R. 278) states the amount which may be advanced, and that the loan may be safely made: see *Re Stuart*, [1897] 2 Ch. 583. Neglect in any of these respects may render the trustees liable; see *Re Dive*, [1909] 1 Ch. 328; *Shaw v. Cates*, *ib.* 389. Valuation.

As to the valuer's liability for negligence, see *Le Lievre v. Gould*, [1893] 1 Q. B. 491; *Love v. Mack*, 93 L. T. 352.

Trustees must use their discretion as to calling in a mortgage where the security has become insufficient: *Re Chapman*, [1896] 2 Ch. 763; *Jackson v. Dickinson*, [1903] 1 Ch. at p. 953. As to the jurisdiction of the Court to interfere with the discretion of trustees, see *Re D'Epinoix*, [1914] 1 Ch. 890.

Supplementary powers to leave loan outstanding, to leave purchase money on mortgage,

Section 10 confers upon trustees certain powers supplementary to their powers of investment. By sub-s. (1) they may in lending money upon any property upon which they are authorised to lend contract not to call the money in during any period not exceeding seven years, provided the interest is paid within thirty days of the days appointed for payment and provided there has been no breach by the borrower of any covenant on his part for the maintenance and protection of the property. By sub-s. (2) trustees or a tenant for life or statutory owners may on a sale of land in fee simple or for a term of at least five hundred years in cases when the proceeds of sale are liable to be invested agree to leave not more than two-thirds of the purchase-money upon mortgage of the land agreed to be sold and any such mortgage must contain a covenant by the mortgagor to insure the premises against loss or damage by fire to the full value thereof. In lending upon such a mortgage the trustees need not obtain a valuation or any advice, and are not responsible for any loss incurred by reason only of the security being insufficient at the date of the creation of the mortgage. By sub-s. (3) trustees may concur in schemes for reconstruction or amalgamation of companies or for modification of the rights attached to securities as if they were entitled to such securities beneficially. By sub-s. (4) they may exercise any conditional or preferential right to subscribe for new securities in any company offered to them and may pay for the same out of capital money subject to the trust or they may renounce such rights for the best consideration obtainable to any person including a beneficiary without being responsible for any loss, provided they act in good faith.

to concur in schemes for reconstruction, etc., and to deal in rights.

All the foregoing supplementary powers are exercisable only with the consent of any person whose consent is necessary to a change of investment.

It will usually be desired to except Irish real securities, and Bank of Ireland Stock and, possibly, also securities issued by the Government of Northern Ireland.

Investments to be expressly excepted or included

Scottish heritable bonds, which are not excluded, are now free from the objection of being real estate, being by the Titles to Land, &c. (Scotland) Act, 1868, s. 117, made personal estate except in certain cases: see, however, *Re Fitzgerald*, [1904] 1 Ch. at p. 588, where the Act was not cited, and it was stated that such bonds must be regarded in our Courts as immovables.

Leasehold securities unauthorised as statutory investments (see s. 5) have been rendered safer by reason of the protection against forfeiture for breach of covenant afforded by the L. P. Act, 1925, ss. 146, 147 (see *ante*, p. 332), but where the covenants are onerous are open to objection. It is, however, not unusual to include them even where the range of investment is meant to be restricted.

Power to deposit money at Bank and pay calls.

Pending negotiation and preparation of any mortgage or charge or while an investment is being sought for, trust moneys may be paid in to a bank on deposit or other account, and any interest earned is applicable as income. Capital money subject to a trust is applicable in the payment of calls on any shares subject to the same trust: T. Act, 1925, s. 11.

Investment of proceeds of sale of land.

Proceeds of sale of any land held upon trust for sale may be invested in the purchase of other land: L. P. Act, 1925, s. 28 (1); S. L. Act, 1925, s. 73 (xi).

INVESTMENT CLAUSES.

1. TRUST MOYS may with such consent or at such discreon as afsd be invested in or upon any investmts in or upon wch trust funds or cash under the control or subjt to the Order of the High Court of Justice may for the time being be authorised by law to be invested [except upon real secs in Ireland or in the stock of the Bank of Ireland] but not in any other mode of investmt: [Provided that no investmts hrby authorised shl be held in bearer form or in such a form as to be negotiable by delivery either with or witht endorsemt (a)].

Re-
stricted
range.

2. TRUST MOYS may with such consent or at such discreon as afsd be invested in or upon any of the public stocks or funds or Governmt secs of the United Kingdom of Gt. Britain & N. Ireland or India or any Colony (wch expression shl mean any Dominion, Commonwealth, Union, Dependency, or Colony forming part of the British Empire, or any province or state having a separate local legislature & forming pt thof resply but shl not include Ireland (b)) or any secs (c) the intt on wch is or

Fair
range.

(a) Where the proviso in the text is omitted and the trustees are consequently authorised to hold bearer securities the following clause should be added after the investment clause: "The trees shl deposit any bonds to bearer or other negotiable instrumts or any documts of title negotiable by delivery with or without indorsemt wch represent for the time being any pt of the trust fund with a bank to be selected by them & shl insure & keep insured all such bonds negotiable instrumts & other documts of title agst loss or damage by fire, theft or defacemt, & shl pay the premiums for all such insurce out of the income of the trust fund." It is believed that the Banks will continue their practice of keeping for safe custody securities deposited with them by their customers without charging a fee. Although the risk of loss or damage is remote the Bank with whom securities are deposited without fee is merely a gratuitous bailee and liable only for gross neglect, the burden of proof being on the customer. Except where the trustees are a trust corporation bearer securities must be deposited with a banker: T. Act, 1925, s. 7 (1).

Direction
to deposit
bearer
securities
with
Bank and
to insure.

(b) An express power to invest in stocks or securities of "any British Colony or Dependency" does not, of itself, authorise investment in the stocks or securities of any province of Canada or state of Australia if the stock was issued after those provinces or states became subject to a central as well as a local legislature: *Re Maryon-Wilson*, [1912] 1 Ch. 55; discussed 55 Sol. J. 499, and 56 *ib.* 64. Such an investment, however, appears to be authorised by the Colonial Stock Act, 1900.

(c) "Securities" though popularly used as meaning all kinds of invest- Meaning

shl be guaranteed by Parliamt, or upon freehd, leasehd, or chattel real (*d*) secs in Great Britain but not in Ireland, [or on first charges registered under the L. R. Act, 1925, on freehd or leasehd ppty in England or Wales (*e*),] such leasehds or chattels real havg not less than — yrs to run at the time of such investmt being made, or in stk of the Bank of England [or the Bank of Ireland] or Metropolitan Stk or London County Stk, or in or upon the debentures, debenture stk, or guaranteed or preferee or ordinary stk or shares (*f*) of any rly or other Co a fixed or minimum rate of intt or dividend on wch is guaranteed (whether absolutely or orwise) by the Governmt of India, or in or upon the debentures or debenture or rent-charge stk of any rly, canal, dock, harbour, gas, water, or other Co incorporated by special Act (*g*) of the

of "securities."

ments has in a settlement or will a stricter sense, being confined to instruments which confer a charge on property, and not extending to stocks and shares: see 39 Sol. J. 122; *Re Rayner*, [1904] 1 Ch. 176; *Re Gent & Eason*, [1905] 1 Ch. 386. This may, however, be enlarged by the context. "Securities" as used in the L. P. Act, 1925, s. 205 (1) (xxv.), in the S. L. Act, 1925, s. 117 (1) (xxiii.), in the T. Act, 1925, s. 68 (13), and in the Public Trustee Act, 1906 (see s. 15), means stocks, funds and shares.

(*d*) The expression "chattel real" is used as distinguished from "leasehold" securities, as being a more correct designation of long terms arising under settlements, which, although technically leasehold, were not created by lease.

(*e*) Probably "freehold or leasehold security" includes a first registered charge with power of sale on registered land, as the remedies of the owner of such a charge for the recovery of his money are the same as those of a first mortgagee of unregistered land especially as both have now a legal estate (see *ante*, p. 273); but to avoid all doubt the words in this bracket may be added.

(*f*) As to the distinction between stock and shares, see *Re Willis*, [1911] 2 Ch. 563.

(*g*) A company incorporated by Act of Parliament means a company incorporated by special Act: *Re Smith*, [1896] 2 Ch. 590; or by charter from the Crown granted under statutory authority: *Elve v. Boyton*, [1891] 1 Ch. 501; and see 40 Sol. J. 633. The expression "public company" includes a company incorporated under the Companies Acts: *Re Sharp*, 45 Ch. D. 286, with the possible exception of a private company as defined by s. 121 of the Companies C. Act, 1908, amended by the Companies Act, 1913: see *Park v. Royalties, &c.*, [1912] 1 K. B. 330, and see 26 L. Q. R. 11, 259.

The expression "any Company in the United Kingdom" includes a Company having its head office in England where the directors meet, although its property is situated and its operations are abroad: *Re Hilton*, [1909] 2 Ch. 548. The question whether "Company" in an investment clause includes a foreign Company is discussed in *Re Castlehow*, [1903] 1 Ch. 352; and *Re Stanley*, [1906] 1 Ch. 131

Imperial Parliamt or of the legislature of any Colony or by Royal Charter, or in or upon the guaranteed or preference stk or shares of any such Co as afsd wch shl have pd dividends upon its ordinary capl at the rate of at least three p.c., p.a., for at least the five yrs prior to the time of investmt (of wch fact a letter purportg to be signed by the secretary of the Co, or by a banker or member of a firm of bankers, or by the secretary or manager of a joint stock bank or of any branch throf, shl be sufft evidence) or in or upon the stks, bonds, debentures, or secs of any municipality, County or District Council, public body, or local authority in the United Kingdom afsd, or in or upon any other stks, funds, or secs for the time being authorised by law for the investmt of trust funds [but not in any stks, funds, bonds, shares, or secs to bearer, or transferable by mere delivery or delivery & endorsemnt though coming within the general description of investmts hrinbfe authorised].

3. TRUST MOYS may with such consent or at such discreon as afsd be invested in or upon any of the public stks or funds or Governmt secs of the United Kingdom of Great Britain & N. Ireland or India or any Colony (wch expression shl mean any Dominion &c., *as in f. 2*), or of any foreign Governmt or State, or any secs the intt on wch is or shl be guaranteed by Parliamt, or (a) upon mtge of freehd, or leasehd ppty in Great Britain, but not in Ireland [includg first charges registered under the L. R. Act 1925 on freehd or leasehd ppty in England

Wider
range.

(a) If power is to be given to purchase land say "in the pchase or upon mtge of freehd, &c." Where it is probable that a landed estate, ground rents or a house will be purchased it will be convenient to use forms 9, 10 or 11, *post*, pp. 543, 544. Section 32 (1) of the L. P. Act, 1925, provides that, where a settlement of personalty made after 1911 contains a power to purchase land, the purchased land (unless the settlement otherwise provides) is to be held on trust for sale with power to postpone the sale, and that the net rents and profits (after keeping down the costs of repairs and insurance) shall be applied as if they were income arising from the investment of the sale moneys. Where land has either before or after the commencement of the Act become subject to a trust for sale, such trust is, in favour of a purchaser, to be deemed to be subsisting, until the land has been conveyed to or under the direction of the beneficiaries: L. P. Act, 1925, s. 23. Further by s. 27 (1) of the same Act where a trust for sale attaches to the land under the Act or otherwise a purchaser of a legal estate in the land is not concerned with the trusts effecting the proceeds of sale. Irrespective of s. 32, where land or ground rents are purchased under a power, the power to vary securities authorises a resale: *Re Gent & Eason*, [1905] 1 Ch. 386; *Re Pope*, [1911] 2 Ch. 442.

or Wales (b)], such leasehds havg not less than — yrs to run at the time of such investmt being made, or in the pchase of freehd ground rents (c), or on mtge of or on such first registered charge as afsd on leasehds havg any term of yrs to run togr with a sinkg fund poly at an annual premium securg the paymt on or before the expiron of the term of a sum not less than 20 p.c. larger than the sum lent, or on the seey of any intt for a life or lives, or determinable on a life or lives or any other event, in real or psonal ppty in Great Britain, but not in Ireland, togr with a poly or pols of assurse on such life or lives or against such event, or in stk of the Bank of England [or the Bank of Ireland] or Metropolitan Stk or London County Stk, or in or upon the debentures, debenture stock or rent-charge, guaranteed or preferce stk or shares of any Co incorporated by Special Act or by or under any public general Act or Acts of the Imperial Parliamt (d) or the legislature of any Colony or Royal Charter, or in or upon the ordinary stk or shares of any such Co, a fixed or minimum rate of intt or dividend on wch is guaranteed by the Governmt of the United Kingdom afsd or India or any Colony or any foreign Governmt or State, or in or upon ordinary preferred stk or shares but not on deferred stk or shares of any such Co, or in or upon the debentures, debenture stock, obligons, or secs of any foreign rly Co, or in or upon the stks, funds, debentures, or secs of any public, municipal, or local body or authority in any pt of the world except Ireland [but not in any stks, &c., as at p. 539, f. 2].

Extensive
range (e).

4. TRUST MOYS may with such consent or at such discron as afsd be invested in or upon any of the public stks, or funds, or Governmt secs of the United Kingdom of Great Britain and N. Ireland, or India, or any Colony (wch expression shl mean any Dominion, &c., as at p. 537, f. 2), or of any foreign Governmt or State, or in or upon freehd, leasehd, or chattel real (f), secs in Great Britain or Ireland, or on chges registered

(b) See *ante*, p. 538, note (e).

(c) See *Re Mordan*, [1905] 1 Ch. 515.

(d) This includes private companies.

(e) See *ante*, p. 537, note (a).

As to
chattel
personal
security.

(f) Add, if desired, "with or witht chattel psonal," which will authorise a mortgage of, e.g., a factory comprising machinery, plant, stock-in-trade, &c. But in the present state of the law as to bills of sale, such an investment by trustees could scarcely, except under very special circumstances, be proper.

under the L. R. Act 1925 on freehd or leasehd ppty in England or Wales, such leasehds or chattels real havg not less than — years to run at the time of such investmt being made, or on mtge of or on such registered charge as afsd on leasehds havg any term of yrs to run togr with a sinkg fund poly at an annual premium securg the paymt on or before the expiron of the term of a sum not less than 20 p.c. larger than the sum lent, or on the secy of any intt for a life or lives, or determinable on a life or lives or any other event, in real or psonal immovable or movable ppty in the United Kingdom afsd or India, or in any Colony or in any foreign country, togr with a poly or pols of assuice on such life or lives, or against such event, or on the secy of any reversionary intt whether vested or contingent in any real or psonal ppty togr in the case of a contingent reversion with a pol of assuice coverg the contingent risk, or on the secy of any real or immovable (a) ppty in India, or in any Colony or in any foreign country, or in the pchase of freehd or leasehd ground rents, or in or upon the bonds, debentures, debenture.stk, mtges, obligons, or secs, or the guaranteed, prefece or ordinary stk or shares, or ordinary preferred or deferred or other stk or shares of any Co, or public, municipal, or local body or authority in any pt of the world except Ireland.

5. TRUST MOYS may with such consent or at such discron as afsd be invested in the pchase of or at intt upon the secy of such stks, funds shares, secs, or other investmts of whatsr nature & wheresr & whether involvg liability or not, or upon such psonal credit (c) with or witht secy as the trees shl in their absolute discron think fit (d), to the intent that the trees shl have the same full & unrestricted powers of investg &

The same,
short
form
(b).

(a) Add, if desired, "with or witht movable," which will authorise a mortgage of an estate with the stock on it, as is common in the Colonies.

(b) As to clauses of this description, see *Re Brown*, 29 Ch. D. 889; *Vaizey on Trust Investments*, 180; *Lewin*, 12th ed., 339 *et seq.* Powers purporting to give an unlimited latitude in a short form, have sometimes been interpreted as authorising only the restricted range open to trustees in general, so as to prove misleading and dangerous. The form in the text is clearly not liable to such a restricted construction, and would authorise an investment in the purchase of land. *Re Wragg*, [1919] 2 Ch. 58; but it is better to use f. 4.

As to un-
restricted
powers of
invest-
ment.

(c) As to lending to the tenant for life, see *Re Laing*, [1899] 1 Ch. 593.

(d) *I.e.*, honestly think fit: *Re Smith*, [1896] 1 Ch. 71.

transposg investmts in all respts as if they were absolutely entitled thereto benefly.

Power to
lend on
second
mortgage
or for a
term
certain,
or on con-
tributory
mort-
gage.

6. ANY SUCH investmt on mtge or registered charge may be subj't to any prior charges or incumbees or to any stipulon for the continue of the loan for any term certain (e), or may be made in conjunction with any other pson or psons by way of contributory mtge (f) to be taken in the joint names of the contributories to the loan, or any of them, or in the names of any psons (not being less than three in number) as trees for such contributories, or orwise, as may be deemed expedient.

Power to
invest on
mort-
gages,
&c.,
guaran-
teed by a
company.

7. ANY SUCH investmt of trust moys may be made on a mtge the ppal & intt of wch shl be guaranteed by a poly of any Co authorised to give such guarantee, & upon any mtge so guaranteed the trees may advance such amt (up to the full amt guaranteed) as they in their absolute discron may think fit, witht regard to the value of the ppty comprised in such mtge, & may also have any other investmts formg pt of the trust premes guaranteed by any Co wch is empowered in that behalf, & may pay the premium or premiums for any such guarantee as afsd out of the income of the trust premes, or in such other mner as they may think fit.

Power to
lend part
of trust
funds to
husband
(g).

8. (i.) THE TREES may [& shl if requested in writg by the husbd & wife during their joint lives] advance from time to time any moys not exceedg in the whole the sum of £—— out of any pt of the trust premes (wch the trees are hby authorised to sell, call in, or convert into moy for that ppose), by way of loan to the husbd, for such period, at such rate of intt (not being less than *five* p.c. p.a.), & upon such terms as the trees shl think fit, & so that the repaymt of every or any sum so advanced with the intt thron be seed by the bond or covt of the husbd, either with or witht any other secy.

(ii.) The trees may allow the moys so advanced to remain on

(e) See *Vickery v. Evans*, 33 Beav. 376, and *ante*, p. 536.

(f) Trustees cannot, without special authority, lend on a contributory (*Webb v. Jonas*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328) or a second mortgage: *Re Newland*, 49 Sol. J. 14: discussed, *ib.*, p. 3.

(g) The debt does not become statute-barred by non-payment of interest: *Re Dixon*, [1900] 2 Ch. 561; *Re Eyre-Williams*, [1923] 2 Ch. 533.

loan as afsd so long as the husbd may require [but so that they may, at the request in writg of the wife, durg her life, & after her death, at their discron call in & compel paymt of the same], & so that the trees shl not under any circes be liable for the loss of any moys so advanced or the intt thron.

(iii.) The trees shl stand possed of the sum or sums, the paymt whrof is intended to be seed as afsd, & the income throf resply, Upon the same trusts & with & subjt to the same powers & provons as the moys so advanced, & the income throf resply, wd have been subjt to or held upon if the same had not been so advanced.

9. (i.) TRUST MOYS may with such consent or at such discron as afsd be invested in the pchase of landed ppty in England or Wales but not in Ireland of any tenure (b) includg leasehds held for a term of wch not less than 60 yrs shl be unexpired at the time of pchase & whether subjt or not to leases, easemts or restrictive covts.

(ii.) All such ppty shl be assured to the trees (c), the fee simple or for the residue of the term or terms for wch the same

Power
to pur-
chase
land (a).

(a) Where trustees are given power to invest in land powers of leasing and management should be inserted, if the powers conferred by s. 28 of the L. P. Act, 1925, are not considered sufficiently wide for the purpose. As to these powers, see *post*, p. 547.

This power renders the trust property "liable to be laid out in the purchase of land" within ss. 73 and 76 of the S. L. Act, 1925: *Re Soltan*, 1898] 2 Ch. 629.

Where trustees have power to invest in the purchase or on mortgage of land and the trust instrument does not provide to the contrary the T. Act, 1925, s. 6, gives them power to invest therein notwithstanding that the same is charged with a rent under the Public Money Drainage Acts 1846 to 1856, or the Landed, &c. (Ireland) Act, 1847, or by an absolute order under the Improvement of Land Act, 1864. This does not, however, extend to rents created under the special acts of the Land Improvement Companies.

(b) When the purchase of leaseholds for short terms protected by sinking fund policies is allowed, substitute for "includg leasehds, &c.," the words "& in case of leasehds with or witht a sinkg fund poly or pols," and insert clause 1, p. 550.

(c) If the Public Trustee is the sole trustee say "the Public Tree & his successors," see Co. Litt., 94b. If he and one or more persons are the trustees say "the Public Tree & his successors, & the sd A., B. & C.," or, more shortly, "for the este pchased by them."

is held (*d*) Upon trust with such consent or at such discreon as afsd to sell the same & to hold the proceeds of such sale (after paymt of the costs throf) Upon the same trusts & with & subjt to the same powers & provons (including this psnt power of purchasing landed ppty) as the moy so laid out in the pchase of the sd ppty wd have been subjt to if it had not been so laid out (*e*).

Power to purchase ground rents (*f*).

10. TRUST MOYS may with such consent or at such discreon as afsd be invested in the pchase of freehd ppty in England or Wales but not in Ireland wch shl be subjt to a lease or leases having at least 30 yrs unexpired at the time of pchase provd that the rent reserved by any such lease shl not exceed one eql third pt of the annual rack rent value at the time of pchase.

Power to invest a fixed sum in purchasing a residence.

11. (i.) TRUST MOYS may with such consent or at such discreon as afsd be laid out to an amt not exceeding £—— in the pchase of a messe with suitable outbldgs, offices & other appurtenances & with or witht gardens, pleasure grounds & lands to be held therewith [& to an amt not exceeding £—— in repairing (*g*), decorating & furnishing the same] as a residence for the husbd & wife or the survor of them, such messe & premes to be situate in England or Wales, & to be either freehd or leasehd held for a term of wch not less than 50 yrs shl be unexpired at the time of pchase.

(ii.) Such messe & premes shl be assured, &c., *continue as at* p. 543, f. 9 (ii.), *saying* “messe & premes” for “ppty” (*h*).

Where husband takes a pro-

(iii.) If any pt of the wife's fortune shl be spent in pchasing a messe or furniture [or in making such repairs & decorations] as afsd, then after the death of the wife & during any period or

Variation for settlement by one deed.

(*d*) Where this power is contained in a settlement of land by way of trust for sale and declaration of trust of the proceeds effected by one deed, substitute for the rest of the clause as follows:—“UPON THE TRUSTS & subjt to the powers & provons hrinbfe declared & contd concerning the ppty hby assured, or such of the sd trusts, powers, & provons as shl be subsistg or capable of takg effect.”

(*e*) It is unnecessary to declare trusts of the rents till sale: see *ante*, p. 539, note (*a*).

(*f*) See *ante*, p. 539, note (*a*).

(*g*) See *post*, p. 549, note.

(*h*) If the husband and wife quarrel, difficulties may occur, as the spouse whose fortune was invested in the purchase of the house may have no income, and the other may decline to consent to the sale: see 48 Sol. J. 240. It is suggested, therefore, that the words following should be inserted

periods of the husbd's life when the income of the wife's fortune sh^l not be payable to him or during any pt or pts (either continuous or discontinuous) of any such period as the trees sh^l in their absolute discrⁿ think fit, the trees may, until the sd messe sh^l be sold, permit any pson or psons who sh^l for the time being be objects of the discretionary trust or power h^rinbfe contd concerning the income of the wife's fortune to reside th^rin & use the unsold pts of the sd furniture & subj^t thereto sh^l hold the said messe & furniture Upon the same trusts as if the husbd were dead.

ected life
interest
in the
wife's
fortune.

12. (i.) AN INVENTORY [INVENTORIES] of the furniture pchased under the power h^rinbfe contd sh^l be made [in duplicate] at the time of pchase & [one copy thro^f sh^l be] signed by the psons or pson at whose request such pchase sh^l be made & retained by the trees [& the other copy thro^f sh^l be signed by the trees & retained by the pson for the time being entitled to occupy the messe pchased togr with such furniture].

Powers
as to
insurance
and pre-
servation
of furni-
ture.

(ii.) The sd furniture sh^l be insured & kept insured against loss or damage by fire in such a sum as the trees sh^l from time to time determine Provd that the trees sh^l not be bound to see to the insce or preservon of such furniture or to interfere in any way in relation thereto (other than to require such inventory [inventories] to be made & signed as afsd) & sh^l not be responsible for any neglect or default in effecting or maintaining such insce Provided nevertheless that th^e trees may if they think fit effect & maintain such insce (a) & take such means as they may think fit for the preservon of the sd furniture including the removal of it from the sd messe & warehousing the same.

(iii.) The costs of making such inventory [inventories] & of effecting & keeping up such insce as afsd sh^l be pd out of such pt of the income or capl of the trust premes as the trees may from time to time direct or in the case of an insce effected by the trees as they may in their absolute discrⁿ think fit.

Costs.

after the trust for sale: "PROVD ALWAYS that such sale may at the discrⁿ of the trees be made with the consent in writg of one of them, the husbd & wife."

(a) See T. Act, 1925, s. 19.

Power to
take pur-
chased
lease-
holds in
name of
bene-
ficiary (b).

13. (i.) LEASEHDS PCHASED with trust moys shl if the trees so request be assned to the pson or psons with whose consent the pchase is made Upon trust to assn the same to the trees witht requiring any covt of indemnity & in the meantime to pay the rents (if any) throf to the trees.

(ii.) The trees shl hold such leasehds when assned to them & the rents throf when pd to them Upon the same trusts resply as if such leasehds had been conveyed directly to them in the first instance.

(iii.) The trees shl not be bound to enforce the trust for assnmt to them of leasehds so pchased & assned as afsd & shl not be responsible for any loss wch may be occasioned to the trust este by reason of any delay on their pt in enforcing such trust or their omission to enforce the same.

(iv.) On the sale of such leasehds or of any pt throf the trees may require the pchaser to enter into such covts for the indemnity of the pson or psons giving such consent, their or his exs or ads, against the covts entered into by him or them on the pchase of the sd premes as the trees shl think pper.

POWERS OF TRUSTEES FOR SALE OF LAND.

Conver-
sion no
longer im-
portant.

Owing to the assimilation of the law relating to the devolution of real and personal property on intestacy contained in Part IV. of the A. of E. Act, 1925, the doctrine of conversion as affected by a trust for sale is no longer of any importance in the case of rights which accrue after 1925.

Trust for
sale with
power to
postpone.

In every trust for sale of land whenever constituted a power to postpone sale is implied unless, in the case of trusts constituted after 1925, an intention to the contrary appears. Subject to any express direction to the contrary trustees who in the exercise of their discretion postpone a sale are not liable in any way for postponing it for any indefinite period. A trust either to retain or sell land, which comes into operation after 1925, is construed as a trust for sale with power to postpone: L. P. Act, 1925, s. 25.

Consent
to sale.

There is no objection to the trust for sale being exerciseable only with the consent of some other person or persons, but if the consent of more than

(b) If the assignment is made by the vendor to the trustees, they will have to give the usual covenant for indemnity: *Beauclerk v. Ashburnham*, 8 Beav. 322; *Cadogan v. Essex*, 2 Drew. 227.

two persons is required then in favour of a purchaser the consent of any two of such persons is sufficient : s. 26. By sub-s. (3) of the last-mentioned section as amended by the schedule of the L. P. (Amendment) Act, 1926, trustees for sale must so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale and so far as consistent with the general interests of the trust give effect to the wishes of such persons or the majority of them according to the value of their combined interests. A purchaser, however, is not concerned to see that this provision has been complied with. The above provisions as to consents apply to trusts for sale whenever created.

A purchaser of a legal estate from trustees for sale is not concerned with the trusts affecting the proceeds of sale whether those trusts were made to attach to such proceeds of sale by the L. P. Act, 1925, or otherwise or with the trusts affecting the rents and profits of the land until sale. This is so whether or not the trusts are declared by the same instrument by which the trust for sale is created : s. 27 (1). By the amendment to sub-s. (2) of the last-mentioned section in the schedule to the L. P. (Amendment) Act, 1926, notwithstanding anything to the contrary in the instrument, if any, creating the trust the proceeds of sale or other capital money must not be paid to or applied by the direction of fewer than two persons as trustees for sale save where the trustee is a trust corporation. This provision does not effect the right of a sole personal representative to give valid receipts for or to direct the application of proceeds of sale or other capital money nor render it necessary to have more than one trustee except where capital money arises on the transaction.

By s. 28 (1) of the L. P. Act, 1925, trustees for sale, in relation to land (see the definition of "land" in s. 205 (1) (ix.)) or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the S. L. Act, 1925, including in relation to the land the powers of management conferred by that Act during a minority.

The powers thus conferred by reference on trustees for sale include amongst others, power to create easements or privileges (S. L. Act, 1925, s. 38 (i.)), to exchange the land or any part thereof or any easement or privilege for other land or any easement or privilege (s. 38 (ii.)), to sell for a perpetual or terminable rent-charge to be secured upon the land sold (s. 39), to lease (ss. 41—48), to deal separately with the surface and minerals with or without wayleaves (s. 50), to accept surrenders and regrants (s. 52), to compromise claims and release restrictions (s. 58), to apportion rents (s. 60), to deal with manorial incidents and to effect compensation agreements (s. 62 (3)), to mortgage (s. 71), and to purchase freeholds or leaseholds having a term of sixty or more years unexpired (s. 73 (xi.)) even if subject to certain incumbrances (s. 74). Trustees for sale also have the powers conferred by s. 102 of the S. L. Act, 1925, on the trustees of a settlement under that Act during a minority. By sub-s. (5) of the last-mentioned section the powers conferred on trustees remain exerciseable so long as any person is contingently entitled to the settled land. The powers conferred by reference on trustees for sale are not restricted to a period of minority and are intended to be codified by the Acts : *Re Gray*, [1926] W. N. 278.

All land acquired under s. 28 (1) of the L. P. Act, 1925, must be conveyed to the trustees on trust for sale. The powers so given by reference are exerciseable only with the consent of the same person whose consent is required for a sale under the trust for sale and when exercised operate to override any equitable interests or powers attaching to the proceeds of sale.

Trusts of proceeds of sale off title to land.

Powers of trustees for sale.

By reference to S. L. Act, 1925.

Land acquired by trustees held in trust for sale.

As to the trust for sale implied in the case of land purchased by trustees under an express power to invest in land, see s. 32.

Applica-
tion of
rents and
profits
until sale.

Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale the trustees for sale must pay or apply the net rents and profits of the land until sale after keeping down the cost of repairs, insurance, and other outgoings in the same manner as the income of investments representing the proceeds of sale is made payable or applicable after a sale has taken place, except so far as any part of the rents and profits have to be capitalised under the S. L. Act, 1925 : L. P. Act, 1925, s. 28 (2).

The effect of this subsection in the case of leaseholds held on trust for sale by trustees of a will is to override the decision in *Howe v. Lord Dartmouth*, 7 Ves. 137. See *Re Brooker*, 70 S. J. 526.

Power to
effect
partition.

Where the net proceeds of sale have become absolutely vested in persons of full age in undivided shares, whether or not the shares are subject to any derivative settlement, the trustees may partition the land remaining unsold or any part thereof and provide by way of mortgage or otherwise for the payment of any equality money. The consent of the persons of full age, not being annuitants, who are interested in the net rents and profits of the land until sale must first be obtained but a purchaser is not concerned to inquire whether any such consent has been given. The partition is effected by an assurance of the land partitioned in severalty subject or not to any mortgage created for raising equality money.

The consent of a committee or receiver of a lunatic or defective entitled to an undivided share is sufficient protection for the trustees for sale, and if an undivided share is incumbered the trustees may either give effect to the incumbrance or provide for its discharge by means of the property allotted in respect of the share as they may think fit : s. 28 (3).

Infant's
share.

Where an infant is absolutely entitled to a share in the proceeds of sale the trustees may act on his behalf and retain land to be held on trust for sale or other property representing the infant's share : s. 28 (4).

The powers conferred on trustees for sale by s. 28 apply to dispositions on trust for sale whenever created.

Power of
Court
where
trustees
refuse
to act.

The Court has power under s. 30 where the trustees for sale refuse to sell or to exercise any of their powers under ss. 28 and 29 or when any requisite consent cannot be obtained, on the application of any person interested to make a vesting or other order for giving effect to the transaction or directing the trustees for sale to give effect to an order as the Court thinks fit : s. 30.

Mort-
gaged
property
where
right to
redeem
barred.

Property vested in trustees by way of security and to which they have become entitled discharged from the right of redemption under the Statutes of Limitation or by foreclosure or otherwise is held by them on trust for sale and the net proceeds of sale are applicable in the same manner as the mortgage debt would have been applicable if received : s. 31, and see *Re Horn's Estate*, [1924] 2 Ch. 222.

The right of any person to have such property conveyed to him or at his direction instead of having it sold is preserved.

Power to
delegate
powers of
leasing
and
manage-
ment.

Trustees for sale may delegate their powers of leasing, accepting surrenders of leases and management, and the powers incidental thereto whether conferred by the L. P. Act, 1925, or otherwise, until a sale of the land. The delegation which may be revocable from time to time must be in writing signed by the trustee and in favour of any person of full age, not being a mere annuitant, for the time being entitled beneficially in possession to the net rents and profits of the land for life or any less period,

Unless the contrary appears such writing is sufficient evidence to a lessee that the person named therein is a person to whom such delegation may be made and that the delegation has not been revoked.

The power must be exercised in the names and on behalf of the trustees. The trustees are not liable for the acts or defaults of the person to whom they may have delegated their powers, but in exercising the powers the delegate is in the position of, and has the duties and liabilities of, a trustee: s. 29.

Trustees for sale and personal representatives may, with the leave of the Court, confirm past transactions under s. 66.

The provisions of Part I. of the L. P. Act, 1925, which relate to trustees for sale apply to personal representatives holding land on trust for sale but without prejudice to their rights and powers for the purposes of administration: s. 33.

Personal
representatives.

Although the expense of ordinary repairs and maintenance is, of course, properly payable out of income, the payment out of income of the cost of permanent improvements which would have the effect of "postponing the beneficial enjoyment" of the property cannot lawfully be authorised, as it would amount to an accumulation within the s. 164 of the L. P. Act, 1925, re-enacting the Accumulations Act, 1800, unless the case were within any of the exceptions in that Act; the distinction being that improvements that only keep up the property as distinguished from those which add to its value are not within the Act: see *Vine v. Raleigh*, [1891] 2 Ch. 13; *Re Mason*, [1891] 3 Ch. 467.

As to
payment
for im-
prove-
ments
out of
income.

Neither an insurance to replace the value of leaseholds: *Re Gardiner*, [1901] 1 Ch. 697; nor a direction to accumulate the rents to indemnify against dilapidations: *Re Hurlbatt*, [1910] 2 Ch. 553; is within the Act.

Section 166 of the L. P. Act, 1925, re-enacting the Accumulations Act, 1892, s. 1 (which applies to a will of a person who dies after the 28th June, 1892, even if the will is made before that date: *Re Llanover*, [1903] 2 Ch. 330) forbids a trust for accumulation "for the purchase of land only" except during the minority of the person who would for the time being, if of full age, be entitled to the rents or income. The word "only" is emphatic, and therefore the trust for accumulation is not void where, as in the case of capital moneys arising under the S. L. Act, the purchase of land is not the only manner in which the accumulations may be applied: sub-s. (2) confirming *Re Danson*, 39 Sol. J. 557.

Accumu-
lations.

The Act applies to a direction to accumulate "for the purchase of real estate": *Re Clutterbuck*, [1901] 2 Ch. 285; and possibly to the erection of new buildings on vacant land.

Money liable to be laid out in the purchase of land has been ordered to be applied in erecting new buildings: *Drake v. Trefusis*, L. R. 10 Ch. 364.

In the absence of any direction in the settlement, the Court has power to direct the costs of repairs necessary for the preservation of the settled property to be paid out of capital: *Conway v. Fenton*, 40 Ch. D. 512; see *Re De Teissier's S. E.*, [1893] 1 Ch. 153. Notwithstanding a power to apply income, some expenses fall properly upon capital, *Re Tubb*, [1915] 2 Ch. 137; *Re Stamford and Warrington* (Earl), [1916] 1 Ch. 404, 418. As to the incidence of necessary repairs upon land purchased under a power to invest in the purchase of land, see *Re Freman*, [1898] 1 Ch. 28; *Re Farnham*, [1904] 2 Ch. 561; *Re McClure*, 76 L. J. Ch. 52.

Repairs.

SPECIAL POWERS IN CONNECTION WITH LEASEHOLDS.

Direction
to effect
sinking
fund
policies
(a).

1. (i.) IF & so often as the trees shl pchase ppty held for a term of less then — yrs, they shl forthwith effect in their names in some insce office or offices one or more sinkg fund pols for a sum or sums eql to the pchase-moy of the sd ppty & the expses attendg such pchase, or if they shl pchase one or more sinkg fund poly or pols togr with the sd ppty then for a sum or sums wch togr with the sum or sums assured by the poly or pols so pchased shl be eql to the pchase-moy of the sd ppty & poly or pols & the expses attendg such pchase, the sum or sums so assured to be payable bfe, at, or not later than six calr months after the expiron of the term for wch the pchased ppty is held.

(ii.) The trees shl pay the annual or other premiums required for effectg & maintaing every poly so effected & for maintaing every poly so pchased out of the income of the trust premes, & shl retain every poly so effected or pchased until the moys thereby secd shl become payable, & shl hold the moys assured by & reced in respt of every such poly & the proceeds of sale throf under the power hrinar contained Upon the same trusts & subjt to the same powers & provons (includg this psnt power of pchasg a sinkg fund poly) as the moys laid out in the pchase of the ppty & poly or pols (if any) so pchased wd have been subjt to if the same had not been so laid out.

Direction
to effect
policy at
single
premium
(b).

(iii.) The trees may with such consent or at such discron as afsd effect any such poly at a single premium for the amt hrinbfe directed togr with the amt of such premium, & may pay such premium out of moys forming pt of the capl of the trust premes (wch they are hby authorised to sell for such ppose) & shl hold the moys assured by & reced in respt of such poly & the proceeds of the sale throf Upon the same trusts as if such poly had been effected at an annual premium, save &

(a) As to sinking fund policies, see 47 Sol. J. 248, and *ante*, p. 549, note.

(b) Where the amount of the annual premiums is large, it is convenient to effect the policy by a single premium so as to avoid payment of annual premiums in respect of which no deduction for income tax could be made.

except that the amt of such single premium shl be repaid to the trusts fund from wch it arose in priority to all other paymts.

(iv.) If the sd leasehd ppty shl be sold, the trees may, with such consent or at such discreon as afsd, sell the poly or pols effected on the pchase of or purchased togr with the ppty so sold either by way of surr to the office grantg the same or orwise, & shl hold the proceeds of such sale upon the trusts hrinbfe declared concerng the same.

2. (i.) THE TREES may at the request in writing of the husbd & wife, or the survor of them, surr any lease for the time being subjt to the trusts hrof so as to enable the husbd or wife, or either of them, to take in their, his, or her names or name a renewed lease in posson of the ppty comprised in the surrendered lease, on the terms that the paymt to the trees of the surr value of the surrendered lease shl be seed togr with intt thron until paymt at the rate of £—— p.c. p.a. by a mtge of the renewed lease & of a sinkg fund poly by wch the repaymt of the surr value of the surrendered lease shl be seed on or bfe the day on wch the surrendered lease wd have expired if it had not been surrendered.

Powers
in respect
of re-
newed
and
rever-
sionary
leases.

(ii.) The trees may at the like request, if the husbd & wife or either of them shl accept a reversionary lease to commence on the expiron of any lease for the time being subjt to the trusts hrof at a premium, advance the amt of such premium to the psons or pson takg such reversionary lease on havg the repaymt of the same to the trees, togr with intt thron until paymt at the rate of £—— p.c. p.a., seed by a mtge of such reversionary lease & of a sinkg fund poly securg the receipt of the amt so advanced within twenty-one yrs from the date of the advance.

(iii.) All moys seed by a mtge under either of the pwrs lastly hrinbfe contd shl be charged on the intt under this deed of the psons or pson takg such renewed or reversionary lease.

(iv.) So long as any moy shall remain due on a mtge made under either of the powers lastly hrinbfe contd the ppty comprised in such mtge [but as to ppty comprised in a reversionary lease not until it falls into posson] shl be subjt to the same trusts as if such ppty had been pchased under the power hrinbfe contd other than the trust for the sale throf.

TRUSTS OF ADDITIONAL PROPERTY.

Trusts of husband's life policy by reference to trusts of wife's fortune. Variations for reference to husband's fortune.

1. THE TREES shl stand possed of the moys wch shl be reced by them in respt of the sd poly [respective pols] of assuree hrinbfe assned or, "hrinbfe recited to have been effected," & of the investmts representg the same, & the income throf resply, Upon the trusts, & subjt to the powers & provons hrinbfe declared & contd concerng moys formg pt of the wife's [husbd's] fortune & the investmts representg the same, & the income throf resply, or as near thereto as the deaths of pties & other circes will admit (b), save & except that if there shl be no child of the intended marre who being male attains the age of twenty-one yrs, or being female attains that age or marries, [with such consent as afsd] then from & after the death of the wife, & such default or failure of chln as afsd, & subjt to the trusts, powers, & provons hrinbfe declared & contd & to the powers by law vested in the trees in favour of the issue of the intended marre, & to every or any exercise of such respective powers, the trees shl stand possed of the sd poly moys & the investmts & income throf in trust for the husbd.

Covenant by husband to keep up policy (c).

2. THE HUSBD hby covts with the trees, that if the intended marre shl be solemnised he will not do or suffer anything whereby the sd poly [pols or any of them] or any new poly to be effected as hrinar mentd may become void or voidable, or whereby the trees may be prevented from receiving the moys to become payable under any such poly, or any pt throf, & that if any such poly has or shl become

(b) If the husband's fortune is referred to stop here. In the case of an endowment policy which may mature during the husband's lifetime, the reference should be to the trusts of his fortune; or, if owing to his settling nothing except the policy, the reference is necessarily to the wife's fortune, say "save & except that the husbd shl take the first life intt in the income throf, & that if there shl be, &c.," *as in the text*.

Where husband is a trustee.

(c) Owing to the change in the law effected by s. 82 of the L. P. Act, 1925, in the case of covenants entered into after 1925 it makes no difference to the form of the covenant that the husband is himself one of the trustees. As to the effect of the failure of the office, see 39 Sol. J. 356. As to the remedies of the trustees if the husband fails to perform his covenant, see *Re Jewell's Settlement*, [1919] 2 Ch. 161.

voidable, he will forthwith, at his own cost, do all things necy for restorg or keepg the same on foot ; And that if any such poly has or shl become void he will forthwith at his own cost (unless his life shl not be then insurable or shl be insurable only at a premium more than double the premium for the insce of a healthy male of his then age (d)) effect & assn & deliver to the trees or enable them to effect in their names a new poly or pols, maturg on his death (e), or on such earlier day (if any) as the issuing office shl require, for such sum as wd have been payable under the void poly if the husbd had died on the day when such poly became or shl become void, & all premiums & other moys (if any) necy for keepg the same on foot had been pd on the first day on weh the same had become payable, & the sd poly had not become void, & further that every new poly shl be profit-sharg or not, & shl be effected in such office at such premiums, constant or variable, payable annually or orwise durg the life of the husbd or any less period, & generally with such provons, as the trees shl think fit : AND THAT every new poly, & the moys to become payable thrunder, shl be held upon the trusts, & with & subjt to the powers & provons applicable under this deed to the poly in place whrof such new poly shl be effected & to the moys to become payable thrunder : AND FURTHER, THAT HE, the husbd, will duly & punctually pay the premiums & other moys (if any) necy for keepg on foot the poly [pols] hby settled, & every new poly, & will forthwith deliver the rect for every such paymt to the trees.

3. ANY BONUS or bonuses weh may from time to time be declared on the sd poly [any of the sd pols] of assurce hby settled or any new poly may (subjt to the rules or any resolon of the Assurce Socy in that behalf) be at the option of the husbd, applied either wholly or partially, & either immedly or from any future date, in reduction of the premiums upon such poly, & in default of & subjt to any exercise of the sd

Option of applying bonuses in reduction of premiums (f).

(d) Unless the husband's covenant is qualified as in the text, he will be liable in damages if his life is not insurable : *Re Arthur*, 14 Ch. D. 603.

(e) If the original policy is an endowment policy, insert here " or on the date on weh such void poly wd have matured."

(f) In the absence of this provision the bonus forms part of capital : *Macdonald v. Irvine*, 8 Ch. D. 101.

option such bonus or bonuses shl be added to, & be subj't to the same trusts, powers, & provons as, the moys assured by the sd poly [the poly or respective polys on wch the same shl be declared].

Power to husband to redeem policy.

4. THE HUSB'D may at any time redeem any poly (whether in full force or void or voidable) on his life for the time being subj't to the trusts hrof by paying to the trees the sum wch would have been payable under such poly if the husbd had died on the day when such poly shl be redeemed, & if all premiums & other moys (if any) necy for keeping such poly on foot had been pd on the first day when the same had become payable & the sd poly had remained in full force & effect, or "the sum of £—," & thrupon the trees shl at the cost of the husbd reassn the redeemed poly & all moys assured by or to become payable thrunder to the husbd or his assns, freed & discharged from the trusts, powers, covts, & provons of this deed, & shl hold the sum so pd to them by way of redmon as afsd Upon the trusts & with & subj't to the powers & provons hrinbfe declared & contd concerning moys forming pt of the husbd's fortune [the moys assured by the redeemed poly] or such of the same as shl be subsistg.

Power to trustees to keep up existing policy or to effect new policy.

5. THE TREES may in their absolute discrion apply any pt of the income or capital of the husbd's fortune, or if these shl be insufft of the wife's fortune, in or towards paymt of the premiums or other moys (if any), necy for keepg on foot, or restorg any such poly as afsd or for effectg any new poly (g), or borrow the amt required for any such ppose at intt on the seey of such poly [& the other ppty hby settled, or agrd to be settled, or any pt throf] (a): PROV'D that any moys so applied forming pt (b) of the wife's fortune shl be replaced as

(g) A power to restore does not include a power to effect a new policy. *Re Jewell's Settlement*, [1919] 2 Ch. 161.

Lien for premium paid on policy.

(a) As to the lien of trustees upon the policy for premiums paid by them out of their own money, and their power to borrow for the purpose, see *Re Leslie*, 23 Ch. D. 552, where the subject is discussed; and *Re Winchelsea*, 39 Ch. D. 168. A voluntary payment of premiums in respect of her husband's policies by the wife, gives her no lien: *Re Jones' Settlement*, [1915] 1 Ch. 373.

(b) Where there is no property settled by the husband, say "any moys so applied forming pt of the trust fund shl be replaced out of

soon as may be out of the husbd's fortune & that any pt of the capital of the husbd's fortune wch shl be so applied shl be replaced out of the income of the husbd's fortune.

6. (i.) THE TREES may in their absolute discron, but durg the life of the wife, only with her consent, surr or exchange any poly for the time being subjt to the trusts hrof for a fully pd-up poly or pols, maturg at the same time or times as the poly surrendered or exchanged, to be held by them Upon the trusts & with & subjt to the powers & provons applicable to the poly so surrendered or exchanged, or sell any poly for the time being so subjt either by way of surr to the office or otherwise.

Power to trustees to surrender or exchange policy and trust to accumulate proceeds (c).

(ii.) Upon any such sale or surr the trees shl hold the net proceeds throf & also any moys reced by them on proof in any bkey of the husbd, in respt of his liability to pay premiums or other moys for keepg on foot or effectg any poly or pols subjt or intended to be subjt to the trusts hrof Upon trust to apply the same in or towards replacing the moys (if any) forming pt of the wife's fortune wch shl have been applied in keeping up or restoring any poly hby settled or any new poly to be effected as afsd & subjt thereto Upon trust either to apply the same in takg out a single premium poly to mature at the same time or date as the poly sold or surrendered, or to accumulate the same in the way of compound intt until the time or date at wch the poly sold or surrendered wd have matured, by investg the same & the resultg income throf in any of the investmts hby authorised, & from & after such last-mentd time or date shl hold such accumulated fund & the income throf, Upon the trusts & subjt to the powers & provons hrinbfe declared & contd concerng the investmts representg the moys assured by such poly or pols, & the income throf.

7. IF ANY poly for the time being subjt to the trusts hrof shl become void, & the life of the husbd shl not then be insurable, or shl be insurable only at a premium more than double the

Provision in case policy lapses

the moys to be reced in respt of the sd poly by the trees in priority to all other paymts hby directed to be made out of the sd moys."

(c) The trust for accumulation does not render the settlement obnoxious to s. 164 of the L. P. Act, 1925, re-enacting the Accumulations Act, 1800: *Bassil v. Lister*, 9 Hare, 177: *Re Vaughan*, [1883] W. N. 89.

when husband's life is not insurable.

premium for the insuree of a healthy male of his then age, then the trees sh^l, unless in their absolute discreon they sh^l determine not to do so, yrly, & every yr durg the then residue of the life of the husbd (d) or such pt throf as they sh^l think fit, set aside out of the income of the husbd's fortune such a sum of moy as sh^l from time to time be determined by the trees, not being greater than double the yrly premium required for insurg, in such office as they sh^l select, the paymt, on the death of a healthy male of the same age as the husbd at the time of such poly becomg void, of the sum wch wd have been payable on the same poly if the husbd had then died, & sh^l accumulate the same, &c., *as in form 6* (ii.), *saying* "the void poly wd have matured."

Trustees' indemnity (e).

8. THE TREES sh^l not be chargeable or responsible for any omission or neglect to enforce the covts hrinbfe contd on the pt of the husbd in relation to any poly for the time being subj^t to the trusts hrof, or to keep up or restore any such poly, psuant to the provons hrinbfe contd, or for any such poly lapsg or becomg void by any means whatsr.

Covenant for payment of gross sum on covenantor's death (f).

9. (i.) THE SD, *covtor*, hby covts with the trees that if the intended marre sh^l be solemnised, his exs or ads sh^l at the

(d) See note (c) on last page.

(e) This form will, of course, be omitted if the provision at p. 581 is inserted.

(f) As to proof in bankruptcy under this covenant, see *Barnett v. King*, [1891] 1 Ch. 4. Where the instructions are to insert a covenant to leave a sum by will to be held upon the trusts of the settlement, this form should be adopted: see 3 Dav. Prec., 3rd ed., 804, note. The Bankruptcy Act, 1883, s. 47 (2), invalidating covenants for the settlement of future acquired property did not apply to a covenant of this kind: *Ex p. Bishop*, L. R. 8 Ch. 718; nor does the Act of 1914, s. 42, as the covenant is not by the husband. No additional *ad valorem* stamp duty is payable in respect of the covenant: see Stamp Act, 1891, s. 105.

Covenant for payment of a gross sum.

Estate duty.

In determining the value of the estate of the covenantor for the purpose of estate duty, no allowance will be made in respect of the amount due on the covenant at his death: Fin. Act, 1894, s. 7 (1), (a); and the estate duty in respect of that sum must be borne by the testator's estate: *Re Gray*, [1896] 1 Ch. 620; *Re Dowling*, 108 L. T. 671.

Where, however, the sum is secured not only by a covenant but by a charge on land, the duty will be payable out of the sum covenanted to be paid: *Re Hackett*, [1907] 1 Ch. 385.

Succession duty.

Succession duty is payable on a sum covenanted to be paid on death: *Att.-Gen. v. Montefiore*, 21 Q. B. D. 461; but see *Re Higgins*, 31 Ch. D. 142.

It is sometimes desired to settle a fund where the settlor has only a general testamentary power of appointment over it. In that case the matter must rest in covenant.

expirion of six calr months from his death (a), pay to the trees the sum of £—— [free from death duties], with intt (b) thron at the rate of £—— p.c. p.a., from his death.

(ii.) The trees shl not be liable for any loss occasioned by their omission or neglect to enforce the covt lastly hrinbfe contd. Trustee's indemnity.

(iii.) The sd, *covtor*, may, if he thinks fit, pay the whole or any pt of the sd sum of £—— to the trees during his lifetime, & every sum so pd shall be taken in satisfon or in pt satisfon, as the case may be, of his covt for paymt of the sd sum of £—— by his exs or ads [& from & after any such Power to pay in lifetime of covenantor (c).

A covenant to exercise a general testamentary power of appointment in a particular way, or not to exercise it in any other way, is not specifically enforceable and can only be made the foundation of an action for damages against the representatives of the covenantor; but if the power is exercised whether in pursuance or in contravention of the covenant the appointed fund becomes assets for the payment of debts including the debt under the covenant: *Re Parkin*, [1892], 3 Ch. 510; *Beyfus v. Lawley*, [1903] A. C. 411; *Re Hadley*, [1909] 1 Ch. 20; *Re Pryce*, [1911] 2 Ch. 286; *O'Grady v. Wilmot*, [1916] 2 A. C. 231; and see *Re Guedella*, [1905] 2 Ch. 331; *Re Imray*, 50 Sol. J. 59; *Re Benzon*, [1914] W. N. 156, and s. 32 of the A. of E. Act, 1925. Property subject to a general testamentary appointment now includes entailed interests in land or personalty, see s 176 of the L. P. Act, 1925. As to covenant to exercise testamentary powers of appointment.

(a) If so intended, substitute for this covenant, "that he will within six calr months after the solemnison of the intended marre pay, &c., with intt, &c., from the date throf, & further if the sd sum of £—— shl not be so pd will pay to the trees intt, &c.," as at p. 17, form 2. Omit subclause (iii) and insert the following subclause in its place: "The trees shl not require paymt of the sd ppal sum of £—— or any pt throf, [*where the husbd covts say*, "in the lifetime of the husbd, witht the consent in writg of the wife"] [*where the father of husbd or wife covts, say*, "in the lifetime of the sd, *covtor*, witht the consent in writg of the husbd & wife, or the survor of them,"] & after the death of the wife, [such survor], in the lifetime of the sd, *covtor*, witht the concurrence of all the trees for the time being, if more than one." Variation for payment shortly after the marriage.

(b) As to the omission of any provision as to interest, see *Re Horner*, [1896] 2 Ch. 188.

(c) If the provisions authorising payment in advance are omitted, such payment would not discharge the covenantor if the fund representing the sum paid was, at the time appointed for payment, of less value than the sum covenanted to be paid, or if the whole or part of it was lost owing to breach of trust before that time: 3 Dav. Prec., 3rd ed., 866.

paymt intt at the rate of £—— p.c. p.a. on the sum so pd shl be taken in satisfon or pt satisfon, as the case may be, of the annual sum the paymt whrof is seed by the covt for that ppose hrinar contained (d)].

Declara-
tion of
trust.

(iv.) The sd ppal sum hrinbfe covted to be pd, & any moys pd in satisfon or in pt satisfon throf as afsd by the sd, *covtor*, shl be held & applied by the trees Upon the trusts & with & subjt to the powers & provons hrinbfe declared & contd concerng moys forming pt of the husbd's fortune, or such of the same as shl be subsistg.

Covenant
by father
of hus-
band or
wife to
make up
his or her
reversion-
ary inte-
rest to a
given sum
(e).

10. (i.) THE SD, *father*, hby covts with the trees that if the intended marre shl be solemnised, & if at the death of the [survor of the] sd, *father*, [& —— his wife], the share or shares by the recited deed-poll of the —— day of —— or “hby” appted to, or in favour of, the husbd [wife], togr with any share to wch he [she] may become entitled under any subseqt apptmt or in default of apptmt, of or in the ppty comprised in or subjt to the trusts of the sd settlemt of the —— day of —— or “the settlemt of r8—,” or, “the will & codls of the sd ——” shl not amt in value (computed in such mner as the trees shl think pper) in the whole to the sum of £——, then the exs or ads of the sd, *father*, shl within —— calr months after the death of the [survor of the] sd, *father*, [& —— his wife] pay to the trees such a sum of moy as, with the value (computed as afsd) of the sd share or shares, shl make up the sum of £——, with intt thron at the rate of £—— p.c. p.a. from the death of the [survor of the] sd, *father*, [& —— his wife].

Declara-
tion of
trust.

(ii.) *Declaron as in f. 9 (iv.) that the ppal sum, &c., shl be held upon the like trusts, &c., “as are hrinbfe declared & contd concerng any ppal moys to be reced by the trees from or in respt of the share so appted as afsd.”*

Covenant
by wife's
father to
secure to
her an
equal

11. (i.) THE SD X. hby covts with the trees, that if the intended marre shl be solemnised & the wife, the husbd, or any of her issue shl be living at the death of the sd X., he will by his will give to the trees (but witht prejudice to any

(d) See form 12, *infra*. If an annuity is not provided in addition to the gross sum, interest is sometimes made to commence from the date of the marriage.

(e) See notes to last form.

provons wch he may make for his widow) not less than an eql aliquot pt of his residuary este as hrinar defined accordg to the number of his chln living at his death or dying in his lifetime either bfe or after the date of this deed, leaving a wife, husbd, or issue living at his death, that is to say, such a proportion of his residuary este as the number one shl bear to the total number of such chln, such eql pt or proportion to be held by the trees Upon the trusts, & with & subj to the powers & provons hrinbfe declared concerng the wife's fortune, or such of the sd trusts, powers & provons as shl be subsistg & capable of taking effect.

share of
his estate
on his
death (*f*).

(ii.) For the ppose of this provon the expression "residuary este" shl include the residue of the real & psonal este of or to wch the sd X. shl be actually seised, possessed or entitled at his death (includg real or psonal este over wch he shl by his will have exercised any genl power of apptmt or disposon), or the proceeds of conversion throf wch shl remain after paymt of his funl & testamentary expses, debts & specific or genl devises or legacies given or appted to or in trust for any psons other than his chln, their respective husbds, wives, or issue, or any of them, & shl also include the [value of any ppty hby transferred or pd, or agrd to be transferred, or pd by the sd X. to the trees, & the] value of any ppty wch the sd X. has already given or agrd to give, or shl hrafter give or agree to give, to any child of his (includg the wife [husbd]) or to the husbd, wife, or any of the issue of such child, or to any trees,

Defini-
tion of
residuary
estate.

(*f*) Settlers sometimes insist on this mode of providing for a child on marriage, and the form is therefore given; but the contingencies which have to be guarded against are so various and difficult to provide for (especially as the draftsman is seldom fully informed as to the covenantor's circumstances), and the complications which are liable to arise in the event of the covenantor making dispositions of part of his estate in favour of his other children in his lifetime: *Logan v. Wienholt*, 7 Bli. (N.S.) 1; or making testamentary dispositions not in conformity with, or in disregard of the covenant and otherwise, are such as to render this form of covenant highly inexpedient and to be deprecated: see 3 Dav. Prec., 3rd ed., p. 805, note. The covenant is discussed in Norton on Deeds, 607. A covenant to secure a specific sum on the covenantor's death, as in *f*. 9, *ante*, is much preferable. An agreement by letter to give "a share" was satisfied by giving a legacy in *Re Fickus*, [1900] 1 Ch. 331. "Intend to leave" a sum of money was construed as a contract in *Re Broadwood*, 56 Sol. J. 703. A covenant to exercise a special testamentary power in a certain way is void: *Re Bradshaw*, [1902] 1 Ch. 436; *Re Cooke*, [1922] 1 Ch. 292.

As to
covenant
for secur-
ing to a
child an
equal
share.

to be held upon trusts, under wch such child or the husbd or wife or any issue of such child shl take the first life intt (other than ppty of less value than £500 given as afsd in any one yr, &) other than movable chattels or effects of househd, domestic, or psonal use, or ornamt.

Valu-
ation.

(iii.) The value of any ppty given or agrd to be given as afsd shl be deemed to be its value at the time when it has been or shl be transferred or pd to such child, his or her wife or husbd or issue, or to such trees as afsd & the exs or ads of the sd X. may ascertain such value in any mner they may think fit, & their decision shl bind all pties.

In-
demnity.

(iv.) The exs or ads of the sd X. shl not be responsible for omitting to take into acct the whole or any pt of the ppty wch ought to be brought into acct by reason of the same having been made the subjt of a gift or of an agrmt for a gift in mner afsd, of wch they shl not have had express notice.

Covenant
to pay
annuity
to trus-
tees (a).

12. THE SD, *covenantor*, hby covts with the trees that if the intended marre shl be solemnised he [or his repves] will during his life [or “the lives & life of the sd, *covenantor*, & his wife and the survor of them,”] pay to the trees such annuity [such sum in every yr] as is hrinar mentd, that is to say:—

(i.) So long as the husbd *or* “wife” shl be living, an annuity of £—— commencing from the solemnison of the intended marre, & from & after the death of the husbd *or* “wife” so long as the wife *or* “husbd” if surviving shl be living, an annuity of £—— commencing from such death (b).

(a) As to the stamp duty in respect of this covenant, see Stamp Act, 1891, s. 105.

Alterna-
tive
forms.

(b) Sometimes the covenantor agrees that he or his representatives will “during his life commencing from the solemnison of the intended marre, pay to the trees an annuity of £——, & if he shl die during the lifetime of the sd K. an annuity of £—— commencing from such death.” *Add sub-clauses (ii.) and (iii.).*

In the common case where the object of the covenant is to provide income during the lives of the parents of one of the spouses say “that he will during the lives & life of himself & his wife & the survor of them pay to the trees so long as the husbd or wife or any issue of the intended marre shl be living an annuity of £—— commencing from the solemnison of the intended marre.” *Add sub-clauses (ii.) and (iii.).*

(ii.) Each such [Such] annuity shl be deemed to accrue from day to day & to be payable by eql quarterly paymts on the usual quarter days the first paymt or an apportioned pt throf to be made on the — day of — next.

(iii.) *Trustees' indemnity*, p. 557, f. 9 (ii.).

13. THE TREES shl stand possed of the annuity [for the time being] payable under the covt of the sd, *covenantor*, hrinbfe contd, Upon trust to [pay the same to the husbd [wife] or his [her] assns durg his [her] life [witht power of anticipon] & afterwards to (a)] pay or apply the same to the pson or psons for the pposes & in the mner to whom & for & in wch the income of the husbd's [wife's] fortune, *or as the case may be*, wd for the time being be payable or applicable under this deed or any statute [if the same had fallen into posson], & so that any accumulons made durg the minority of an infant shl be held Upon the same trusts as if the same had been accumulons of the income of the husbd's [wife's] fortune.

Declara-
tion of
trust of
annuity.

14. THE SD, *covenantor*, hby charges his life intt under the recited settlemt of — or “his share in the net profits of the business now carried on by him in ptnp under the firm name of — & Co. & of any business hrinar to be carried on by him under the same firm name” with the paymt to the trees at the times & in mner afsd of the sd annuity hrinbfe covtd to be pd by him.

Charge
of an-
nuity (b).

For a form of covenant by the husband to pay an annuity, see *post*, Prec. VI., p. 601.

If it be desired that the annuity should be received in full without diminution by payment of income tax, the provision must be in such form as will not contravene the prohibitions of the Income Tax Acts. *Burroughes v. Abbott*, [1922] 1 Ch. 86; and instead of the words in this clause and in the alternative forms “an annuity of £——” say in each case “such a sum in every year as after the deduction of the income tax for the time being payable in respect thereof will leave a clear sum of £——,” *ibid.* p. 99. And see *Re Gretton's Indenture*, [1923] 1 Ch. 77, 88. A collateral agreement to pay an additional sum by reference to the amount of tax deducted and itself liable to tax is not void under the Income Tax Act, 1918: *Re Gordon's Settlement*, [1924] 1 Ch. 146.

Free of
income
tax.

(a) These words will be inserted where the person who takes the first life interest in the annuity does not take the first life interest in any other part of the settled property.

(b) As this is a mere equitable charge it is not necessary to give a power of attorney to the trustees, but notice of the charge should be given to the trustees of the prior settlement or to the firm.

Provision
as to
treating
interest
on sums
advanced,
&c., in
satisfac-
tion *pro*
tanto of
annuity.

15. IF THE sd, *covenantor*, shl in his lifetime or by will or codl give any ppty to the trees to be held upon the trusts hby declared concerng the husbd's fortune, then unless the sd, *covenantor*, shl direct in writg to the contrary, or if by an exercise of the power of advancemt applicable to the recited settlemt, *the father's settlemt*, or by the release of the life intt of the survor of, *the father & mother*, the whole or any pt of the husbd's fortune shl fall into posson & be reced by the trees before the death of the survor of, *the father & mother*, then unless the pson or psons with whose consent such power of advancemt shl be exercised, or the pson releasg such life intt, shl direct in writg to the contrary, intt at the rate of £3 p.c. p.a. on the ppty so given to or reced by the trees shl be taken in or towards satisfon, as the case may be, of the annuity of £—— hrinbfe covted to be pd by the sd, *covenantor*.

Provision
as to
taking
legacy in
satisfac-
tion of
annuity.

16. IF THE sd, *covenantor*, shl by will or codl bequeath any legacy or ppty to or in trust for the husbd or the wife, or to or in trust for the husbd & wife & their chlm or, issue or any of them, then, unless the sd, *covenantor*, shl by will or codl or orwise in writg direct to the contrary, if such legacy or ppty shl amt in value to the sum of £——, the sd yrly sum of £—— shl not become, *or*, "shl cease to be," payable, & if the sd legacy or ppty shl be less in value than £——, then the sd annuity of £—— shl be reduced by an annuity eql to £3 p.c. of the amt or value of the sd legacy or ppty.

Declara-
tion that
annuity
or legacy
is not to
be in
satisfac-
tion of
portions
(c).

17. THE SD, *covenantor*, hby declares [that no paymt of the sd annuity of £—— &] that no provon made by him in his life-time or by his will to or for the benefit of the husbd & wife or their issue or any of them shl, unless the will or other instrumt by wch such provon is made or a writing signed by him within six calr months bfe or after the date of such provon being made contains an express declaron to the contrary, be taken in or towards satisfon of the sum of £—— raisable under the [trusts of the term of —— yrs limited by the] settlemt of ——.

Covenant
restricting
the exer-
cise of a
special

18. THE SD X. hby covts with the trees that if the intended marre shl be solemnised, he will not exercise the power of testy apptmt given to him by the recited settlemt as afsd, so as by any means to reduce the share or intt of the husbd *or* "wife"

(c) As to the satisfaction of portions, see *post*, p. 807, note.

in the ppty now or hraftor to become subjt to the trusts throf, to a less amt than the share to wch he or "she" wd be entitled in default of any exercise of the sd power if the same ppty wholly devolved under the trust in default of apptmt thrin contd, or so as to postpone the vestg in posson of such share or intt beyond the period of the death of him the sd, *covtor*.

19. (i.) It is hby agrd & declared that if the wife [shl at the time of the intended marre be or if she] or the husbd

testa-
mentary
power of
appoint-
ment
among
children
(d).

Agree-
ment to
settle
wife's
after-
acquired
property
(a).

(d) As to the release of a special power, see *ante*, p. 479, note.

A covenant (in the negative form) by the donee of a special testamen-
tary power not to exercise it so as to diminish the portion of a child below
a certain sum operates as a release *pro tanto* of the power and is valid:
Re Evered, [1910] 2 Ch. 147. If the power is to appoint by deed or will,
such a covenant would operate as an appointment: *ibid.*, p. 157.

A covenant by the donee of such a power to exercise it in a particular
manner is void: *Thacker v. Key*, L. R. 8 Eq. 408; *Palmer v. Locke*, 15
Ch. D. 294; *Re Bradshaw*, [1902] 1 Ch. 436; *Re Cooke*, [1922] 1 Ch. 292;
but an appointment by the donee is not void merely because it is made in
pursuance of the covenant: *Coffin v. Cooper*, 2 Dr. & Sm. 365; *Palmer v.*
Locke, *sup*.

(a) The questions that arise on the construction of this covenant are
dealt with in Norton on Deeds, 579, and Vaizey, 229. The following
remarks may, however, be useful to the practitioner:—

1. The covenant is not a "usual" one (*Re Maddy*, [1901] 2 Ch. 820), *i.e.*
it should not be inserted without express instructions. Its insertion is
sometimes objected to on the ground that it prevents the wife from having
the personal enjoyment of gifts made to her the value of which is greater
than the minimum, but this objection is obviated by the provision in the
text allowing a donor to exempt a gift from the operation of the covenant.

Not a
usual
covenant.

2. A covenant by a man to settle all his future property is void as against
his trustee in bankruptcy: *Ex p. Bolland*, L. R. 17 Eq. 115, doubted in *Re*
Reis, [1904] 2 K. B. at p. 783, but not if it is limited to part only of such
property: *Re Andrews*, 7 Ch. D. 635; *Re Turcan*, 40 Ch. D. 5; *Re Reis*, *sup*;
Re Lind, [1915] 2 Ch. 345. No case of this kind has arisen on covenants to
settle a wife's future property, but it is conceived that, though a wife trading
whether apart from her husband or not can now be made a bankrupt:
M. W. P. Act, 1882, s. 1 (5) as amended by the Bankruptcy, &c. Act, 1914,
s. 125: *Re Simon*, [1909] 1 K. B. 201: such a covenant would be upheld. A
covenant in a marriage settlement by either the husband or the wife for the
future settlement of property wherein the covenantor had not at the date
of the settlement any estate or interest, whether vested or contingent, in
possession or remainder, not being property in right of the settlor's wife
or husband, is, if the settlor is adjudicated bankrupt and the covenant is
not executed before the commencement of the bankruptcy, void against the
trustee in bankruptcy: Bankruptcy Act, 1914, s. 42 (2), (3); *Re Bulteel's*
Settlements, [1917] 1 Ch. 251; *Re Dent*, [1923] 1 Ch. 113.

Covenant
by man.

Bank-
ruptcy
Act,
1914.

3. The covenant should not extend to property purchased for value
which would generally be contrary to the intention.

Property
pur-
chased for
value.

4. The covenant cannot be enforced by volunteers: *Re Plumpton*, [1910]

in her right shl at any time during the intended coverture

Volunteers cannot but trustees can enforce it. Stamp duty.

1 Ch. 609 (next-of-kin); *Re Anstis*, 31 Ch. D. 596 (heir-at-law); but it can be enforced by the trustees of the settlement in favour of persons within the marriage consideration: *Pullan v. Koe*, [1913] 1 Ch. 9, and cases there cited, and see *Re Cavendish Browne's Settlement Trusts*, [1916] W. N. 341. But the trustees ought not to take steps to enforce it in favour of volunteers: *Re Pryce*, [1917] 1 Ch. 234, 241.

5. The covenant should not be so worded as to comprise property belonging to the wife at the time of the settlement, as *ad valorem* duty would then be payable on any property then in existence. Such property if intended to be settled should be assigned by the settlement, and if not intended to be settled should be excepted.

The Inland Revenue authorities claim the duty if the covenant is restricted to property belonging to the wife at the time of the marriage or accruing afterwards, but it is difficult to see how this claim can be supported, as the covenant is not a settlement of a "definite & certain sum," differing from a sum to which the settlor is contingently entitled as in *Onslow v. I. R. Commrs.*, [1891] 1 Q. B. 239. An extra 10s. duty is in any case payable in respect of the covenant.

Effect of covenant as against (i) the husband;

6. Having regard to the M. W. P. Act, 1882, s. 19, the covenant should be framed so as to bind any interest that the husband may take in the wife's property comprised in the covenant. It is apprehended that, notwithstanding the M. W. P. Act, 1907, s. 2 (2), the husband's covenant will, if he survives the wife, bind any property comprised in the settlement to which he becomes entitled on her death intestate.

(ii) the wife:

The wife will be bound as to all property to which she may become entitled for her separate use which (by virtue of the M. W. P. Act, 1882) includes, in the case of marriages after 1882, all her property existing or future: *Re Lumley*, [1896] 2 Ch. 690. The covenant will also create a liability enforceable against her to the extent of her separate property in the same manner as her other ante-nuptial contracts under ss. 13 and 15 of the same Act.

Property settled to separate use.

7. Property settled on the wife for her separate use is sometimes excepted from the covenant, see *Lloyd v. Prichard*, [1908] 1 Ch. 265. This, however, is a mistake, as the object of the covenant is not merely to exclude the husband, but also to protect the wife against marital influence and also usually to provide for the children. Further, if the exception is extended, as it logically should be, to property made separate by the Act, it would practically annul the covenant, but it has been held that such an exception contained in a settlement made before 1883 does not (unless so expressed) extend to property made separate by the Act: *Re Stonor*, 24 Ch. D. 195; *Re Whitaker*, 34 Ch. D. 227; and the reasoning in those cases appears to show that the same result would follow if the settlement were made after 1883.

To what property the covenant extends.

8. *Primâ facie* the covenant does not include a life interest: *Duncan v. Cannan*, 21 Beav. 307; *Townshend v. Harrowby*, 4 Jur. (N. S.) 353; *Fyfe v. Arbuthnot*, 1 De G. & J. 406; *Re Crawshaw*, [1891] 3 Ch. 176; a life annuity: *Re Dowding*, [1904] 1 Ch. 441; distinguished in *Re Butler*, [1916] 1 Ir. R. 66; accumulations of the wife's income: *Finlay v. Darling*, [1897] 1 Ch. 719; *Re Clutterbuck*, [1905] 1 Ch. 200; *Mackenzie v. Allardes*, [1905] A. C. 285; and apparently not property settled by a contem-

become seised, possessed, or entitled, of or to (b) any real or personal property (other than the property hereby specifically settled), for any

poraneous deed: *Re Williams*, [1911] 1 Ch. 441; but it does include property to which the wife was entitled in reversion at the date of the settlement and which falls into possession during the coverture: *Re Crook's Settlement*, [1923] 2 Ch. 339.

Neither does it (in the absence of express words) include property over which the wife has a general power of appointment: *Tremayne v. Rashleigh*, [1908] 1 Ch. 681; *Vetch v. Elder*, [1908] W. N. 137; unless she appoints to herself absolutely: *Ewart v. Ewart*, 11 Hare, 276; and if she is entitled in default of appointment she cannot defeat the covenant by the appointment: *Re O'Connell*, [1903] 2 Ch. 574. If it is intended to include property of this nature the words in note (b), *infra*, should be added.

In the absence of express provision the covenant does not (according to *Hilbers v. Parkinson*, 25 Ch. D. 200, and *Re Dunsany*, [1906] 1 Ch. 578) extend to entailed interests, but it is submitted that these decisions are erroneous: see 50 Sol. J. 570, 591; 55 *ib.* 378.

9. The covenant does not affect immovable property situate in a place where trusts are not recognised and where all transfers of property are required to be made for adequate pecuniary consideration: *Re Pearse*, [1909] 1 Ch. 304; nor does it extend to property to which the wife becomes entitled after a judicial separation: *Davenport v. Marshall*, [1902] 1 Ch. 82; or a decree absolute for divorce; but it includes property to which she becomes entitled after a decree nisi before it is made absolute: *Sinclair v. Fell*, [1913] 1 Ch. 155. As to the effect of separation under foreign law, see *Re Bankes*, [1902] 2 Ch. 333.

10. The covenant will include gifts from the husband to the wife if not expressly excepted: *Re Ellis*, [1909] 1 Ch. 618; *Re Plumptre*, [1910] 1 Ch. 609; *Leigh White v. Rutledge*, [1914] 1 Ir. Ch. 135; *Re Pryce*, [1917] 1 Ch. 234, 240 (but see Underhill on Trusts, 7th ed., 136); and also bonuses received by her on a sale under the Irish Land Acts: *Re Lady Annaly*, 92 L. T. 13; *Tremayne v. Rashleigh*, [1908] 1 Ch. 681. See *Re Livingstone*, 61 Sol. J. 384.

11. Where property arising from the same source and time under a certain value is excepted from the covenant, legacies taken under codicils to the same will must be aggregated, but a legacy which, by the payment of duty, is brought below the limit is not bound: *Re Pares*, [1901] 1 Ch. 708. And see *post*, p. 566, note (e).

Where, in the like case, a policy was effected during the coverture by the husband in favour of the wife payable at the end of twenty years or the husband's death, and the wife received the policy moneys, it was held that the value of the policy must be ascertained at the time the policy was effected: *Re Harcourt*, 56 Sol. J. 72.

12. The covenant is usually confined to property accruing to the wife during the coverture; and would, unless otherwise expressed, be held to

(b) If it is desired to include property over which the wife may have an absolute power of appointment add "or empowered (either solely or jointly with her husband) beneficially to appoint or dispose of or otherwise than by will or codicil only."

este or intt whatsr in posson, reversion, remr, contingency (a), or expectancy (b), free from & unaccompanied by any condon or expression of intention on the pt of the donor or apptor throf contd in the instrumt (if any) under wch such ppty is acquired, or in a writg signed by the donor or apptor throf either bfe or within — calr months after the date of the gift or apptmt that it shl be held in a manner inconsistent with or be exempt from this psnt covt or from any provon of a like nature (c), except (d) ppty of a less value than £—— vestg in posson bfe or durg the intended coverture at the same time & from a single source (e), & except the accumulons, whether invested or not, of income belongg to the wife, & except ppty pchased for value by the wife, & except ppty given by the husbd to the wife, & except movable chattels or effects of househd, domestic, or psonal use or ornamt (f) (all of wch excepted ppty it is hby

be so confined if the wife survives: *Re Edwards*, L. R. 9 Ch. 97. If the husband survives, the covenant will be construed as extending to any property coming to him from the wife after her death which would not otherwise be caught by it: *Fisher v. Shirley*, 43 Ch. D. 290; *Re Coghlan*, [1894] 3 Ch. 77. A *spes successionis* is not bound by the covenant: *Re Simpson*, [1904] 1 Ch. 1; *Re Mudge*, [1914] 1 Ch. 115.

Con-
tingent
interests.

(a) The covenant usually extends, as above, to contingent interests: see *Lloyd v. Prichard*, [1908] 1 Ch. 265. If this is not desired, in lieu of the words “for any este or intt, &c.” substitute “for an absolutely vested & indefeasible este or intt in posson, reversion, or remr.”

(b) See *Re Bland*, [1905] 1 Ch. 4: discussed 49 Sol. J. 214, 233; *Re Capel's Trusts*, [1914] W. N. 378.

(c) See *Scholfield v. Spooner*, 26 Ch. D. 94; *Re Wharton*, 102 L. T. 531; *Re Thorne*, [1917] 1 Ch. 360, 364.

Entailed
interests.

(d) In some cases it may be convenient to except “any ppty wch if bound by the psnt covt would be forfeited”; in others (in order to avoid the doubt above referred to as to whether the covenant extends to entailed interests) “ppty to wch the wife shl become entitled for an entailed intt whether in posson or remainder.”

(e) In the absence of these words property coming from different sources need not be aggregated, and where the property is reversionary its value is to be ascertained as on the date of its vesting in possession: *Re Hughes' Settlement*, [1924] 2 Ch. 356.

(f) Where title is derived as one of several persons taking on an intestacy or is to a share of residue, there is no right to any part of the property *in specie* such as would make it fall within this exception: *Vanneck v.*

declared shl be & remain the absolute ppty & separate este of the wife) & except also (g) an annuity or other intt for the life or any pt of the life of the wife, or for anyterm or period determinable on her death, wch it is hby declared shl belong to the wife for her separate use, &, unless a contrary intention is expressed by the donor or apptor in mner afsd, witht power of anticipon durg the intended coverture (h), then & as often as the same shl happen all such real & psonal ppty (except as afsd) shl forthwith at the expse of the trust este be assured or transferred by the wife, her exs or ads, & all other neey pties (if any), to the trees, Upon (a) trust that the trees shl, with the consent in writg of the

Benham, [1917] 1 Ch. 60. Where the wife owns property other than personal chattels which is not to be settled add if the words in the bracket at p. 563 are inserted “& except the ppty specified in the — schdle hto.”

(g) In the exceptional case where the wife does not take the first life interest in her own property and the trusts of annuities, &c., are to follow the trusts of such property, omit the above exception of annuities, &c., and insert in the trust for conversion after the words, “as shl not consist of moy,” the words, “or of an anny or other intt for the life of the wife, or for any term or period determinable on her death”; and add after the declaration of trust and before the trustees’ indemnity clause, “& upon trust that the trees shl pay & apply any such annuity or other intt for the life of the wife, or for any term or period determinable on her death as afsd, to the pson or psons for the pposes & in the mner to whom & for & in wch the income of the sd other or future acquired ppty of the wife the trusts whrof are lastly hinbfe declared, wd for the time being be payable or applicable.”

Variation as to annuities, &c., where wife does not take first life interest.

(h) Where the wife appoints property to herself absolutely, under a general power, it becomes bound by the covenant: see *ante*, p. 565. If it is desired to exclude this, add “& except any ppty wch is or shl be subjt to any absolute power of apptmt vested in the wife, solely or jointly with the husbd, whether such power shl be exercised or not.”

Exception as to powers of appointment.

(a) Where brevity is desired, the following may be substituted for the rest of the form: “trusts as nearly correspondg with the trusts hby declared of the wife’s fortune as may be, & so that such real ppty shl be assured on trust for sale.” Add the proviso for protection of trustees as in the full form.

Short form.

husbd & wife, or the survor of them, & after the death of such survor at the discreon of the trees, (but as to reversionary ppty not until it falls into posson, unless it shl appear to the trees that an earlier sale wd be benefl) (b), sell, call in, & convert into moy such pt of the sd ppty as shl not consist of moy with power to postpone such sale, calling in & conversion so long as the trees think fit (c), & shl stand possed of the moys produced thereby (d), & of such pt of the sd ppty as shl consist of moy, & of the investmts of such moys resply, & of the income of the same sevl moys & investmts resply, & of the net income of the sd real & psonal ppty until the sale callg in & conversion of the same resply, Upon the trusts, & with & subjt to the powers & provons hrinbfe declared & contd concerng moys & investmts formg pt of the wife's fortune, & the income throf resply (e).

Per-
petuities

(b) Although as to some reversions the trust for sale may be too remote, the beneficial trusts if restricted as to perpetuities are valid: *Re Appleby*, [1903] 1 Ch. 565.

(c) Where there is risk of the wife becoming entitled to onerous property say, "PROVD ALWAYS that the husbd & wife or either of them shl, at the request in writg of the trees or of any one of them, sell all or any pt or pts of such real & psonal ppty except as afsd (but as to reversionary ppty not until it falls into posson, unless the trees shl require an earlier sale), & pay the net proceeds of such sale to the trees: AND the trees shl, &c.," *continue as in text*.

(d) Such moneys would include a bonus on sale under the Irish Land Acts: *Re Livingstone*, 61 Sol. J. 384.

As to
multiply-
ing
charges.

(e) Where any annual or gross sum is payable or raisable out of or chargeable on the wife's property, say, "but not so as to increase the sd annuity or sum of £——" *or*, "but not so as to increase or multiply charges or powers of charging."

Variation
referring
to trusts
of hus-
band's
property.

If all the property previously settled is the husband's, and the trusts are in the usual form giving him the first life interest and the ultimate reversion in default of issue, the trust of the wife's after-acquired property may be declared by reference to the husband's fortune, with the following variations:—
"Save & except that the wife shl take the first life intt witht power of anticipon in the trust premes, the trusts of wch are now being declared, with remr to the husbd, if he shl survive her, durg his life, & that if there shl be no child of the intended marre who being male shl attain the age of twenty-one yrs or being female shl attain that age or marry [with such consent as afsd], then subjt & witht prejudice to the trusts &

PROVD ALWAYS that if within six calr months from the date at wch any pt or pts of such real & psonal ppty (except as afsd) shl or but for this proviso wd become assurable or transferable to them under this agrmt the trees shl in writg declare the same to be in their opinion unsaleable, then the ppty to wch such declaron shl relate shl from the date of such declaron be exempt from this agrmt & shl belong to the wife for her separate use.

[(ii.) PROVD ALWAYS that the husbd & wife resply & his or her exs & ads shl, under the agrmt or provon hrinbfe contd for the settlmt of the other & after-acquired ppty of the wife, be liable for his, her, or their own acts & defaults

Proviso
limiting
liability
of hus-

powers hrinbfe declared & to the powers by law vested in the trees in favour of the wife & husbd & the issue of the intd marre, the same trust premes shl be held In trust, &c.,"
continue ultimate trusts of wife's ppty, p. 531, f. 26.

The trusts are sometimes varied so as to make provision for the wife marrying again. The following are alternative variations for this purpose to be introduced at this point, but it is more usual to provide for this by a separate clause (see forms 1 to 3, *post*, pp. 570-575). "Save only & except that in substiton for the afsd trusts & powers for the benefit of the child, chln, & other issue of the intended marre, there shl be correspondg provons for the child, chln, & other issue of the wife by the intended or any subseqt marre," *or*, "Save only & except that in the event of the wife surviving the husbd & marryg again, she may by any deed or deeds executed in contemplon of such subseqt marre, or by will or codl executed after such subseqt marre, direct that all or any pt of the income of the sd after-acquired ppty of the wife hrinbfe agrd to be settled or of the ppty for the time being representg the same, shl be pd to her after-taken husbd, if he shl survive her, durg his life or any less period, & subjt to any restrictions or condons she may think fit, & by the same or any other deed or deeds or by will or codl may appt & declare any trusts concerng any pt or pts not exceedg in value at the time of such apptmt takg effect one [moiety] of the capl of such last-mentd ppty in favour of the child, chln, or issue of such future marre."

Variation
providing
for wife's
marrying
again.

Where the wife may probably have a large accession of fortune it may be proper to limit the amount which can be appointed during the joint lives of the husband and wife to the children of the intended marriage.

band and wife (a). only, & not for the acts & defaults of any pson or psons over whom he, she, or they resply may have no control at law or in equity.]

Trustee's indem- nity. (iii.) The trees shl not be liable or accountable in respt of any real or psonal ppty wch may become subjt to this agrmt or provon unless & until the same shl have been actually assured, pd, or transferred to them, nor for omittg to take proceedings to get in the same real or psonal ppty, or any pt throf, unless required so to do by some pson or the guardian of some pson benefly interested under this deed who shl give such seey for the costs of such proceedings as the trees may require.

REVOCATION AND CONFIRMATION.

Power to survivor of hus- band and wife to settle a part of his or her property on a 1. (i.) THE SURVOR (b) of the husbd & wife may (c) at any time or times after the death of the other of them & either in contemplon of or after his or her future marre by any deed or deeds revocable or irrevocable, or by will or codl, but witht prejudice to any apptmt wch may have been made under any power hrinbfe contd, appt that one moiety or "such

(a) This proviso may be desirable as a protection to the husband from liability under the M. W. P. Act or otherwise; see *ante*, p. 564, note.

(b) Where the power is confined to the wife only, say "If the wife shl marry again, [& if there shl, &c., as in note (c)] then she may at any time or times either in contemplon of or after any such future marre, &c.," *continue as in text*. The other consequential alterations will be obvious.

(c) If so intended add "if there shl be not more than — chln of the intended marre who being male attain the age of twenty-one yrs or being female attain that age or marry."

pt as is hrinar mentd" (e), or any less pt of the capl (f) future marriage (d).

(d) This power can be exercised in favour of an after-taken husband or wife not alive at the date of the settlement, as such person must be ascertained within the perpetuity limit: *Re Abbott*, [1893] 1 Ch. 54.

If the child taking the family estate is excluded from the benefit of the present settlement, as at p. 524, f. 16, the references in this form to children of the present marriage should be modified to meet the particular circumstances.

The possibility of the surviving husband or wife remarrying more than once has to be borne in mind. The power in the text is exercisable only after the death of the husband or wife, so that it would not be available in case of a divorce: see *Marlborough v. Marlborough*, [1901] 1 Ch. 165; *Re Pilkington's Settlement* (1923), 129 L. T. 629. If, however, the power is made to arise on a future marriage without any reference to survivorship the case may be different, and if given to both husband and wife might be exercised by both of them. As this might tell rather hardly against the children of the first marriage, especially where the amount to be appointed depends on the number of children of the respective marriages it is perhaps advisable to restrict the power to a surviving husband or wife, except where both spouses bring property into settlement, but the power of withdrawal is confined to one spouse only, in which case (as in note (b) on the last page) reference to survivorship may fairly be omitted.

The Court may, under the power conferred on it by the Supreme Court of Judicature (Consolidation) Act, 1925, s. 192, after pronouncing a decree for divorce or for nullity of marriage, vary the settlement so as to allow the innocent party to exercise the power during the life of the guilty party: *Whitton v. Whitton*, [1901] P. 349; *Hodgson-Roberts v. Hodgson-Roberts*, [1906] P. 142; and see *Atkins v. Atkins*, [1913] P. 211; though generally it will not do so: *Pollard v. Pollard*, [1894] P. 172. And it has been held that under the corresponding sections of the repealed Matrimonial Causes Acts the Court might vary the settlement so as to over-ride a restraint on anticipation even after the remarriage of the wife: *Churchward v. Churchward*, [1910] P. 195; and although the petition to vary is subsequent to the remarriage: *Morgan v. Morgan and Kirby*, [1923] P. 1.

The statutory power to vary a settlement does not extend to an absolute assignment made by one spouse to the other in consideration of the marriage: *Hubbard v. Hubbard*, [1901] P. 157; but it does extend to a post-nuptial bond or appointment securing an annuity: *Bosworthick v. Bosworthick* [1927], P. 64.

The court may vary a settlement so as to extinguish the wife's life interest in her husband's property. As to the amount of allowance to the wife in lieu of her extinguished interest and the question as to whether the allowance should be subject to a *dum sola et casta* clause, see *Ollier v. Ollier*, [1914] P. 240. As to the power of the Court to grant maintenance to the wife, see Jud. Act, 1925, s. 190: *Maidlow v. Maidlow*, [1914] P. 245. The Court may in certain circumstances modify an order made for maintenance: *Hall v. Hall*, [1915] P. 105.

(e) The alternative form will be used if the amount to be settled is to depend on the number of children of the present marriage or of both marriages.

(f) If the share of income which may be appointed to a surviving after-taken husband or wife differs from the share of capital which may be appointed

of the survivor's fortune (g), meaning thereby if the husband shall be the survivor the husband's fortune [& the moys to be received in respect of the parts hereby settled & the moys seed by the covenant of the said X. hereinafter contained, & the investments representing such moys respectively], & if the wife shall be the survivor the wife's fortune [& the moys seed by the covenant of the said Y. hereinafter contained & the investments thereof, & any property becoming settled by virtue of the agreement for the settlement of her after-acquired property hereinafter contained (a)] shall be withdrawn wholly or partially, as the case may be, from the operation of this present settlement and be held upon such trusts & with such powers exercisable by such person or persons as shall be declared by such appointment for the benefit of the after-taken husband or wife of such survivor, & the issue (whether children or more remote) of such survivor by any such after-taken husband or wife, such issue to be born & take vested interests within twenty-one years after the death of such survivor, but so that such after-taken husband or wife shall not take any interest exceeding a life interest, & no child or remoter issue of such future marriage shall (except by advancement) take an interest vested earlier than his or her age of twenty-one years or day of marriage (b).

to the children of a future marriage, say, " of the income," and later after (a) say, " shall from & after the death of such survivor be paid to his or her after-taken wife or husband during her or his life or any less period & either with or without any restriction : AND ALSO in like manner may appoint that one moiety or any less part of the survivor's fortune shall, &c.," as in the text, omitting the power to appoint income to an after-taken husband or wife. If necessary any of the provisions at the end of the form may be adapted to the appointment of the income.

(g) Where property is settled by one of the spouses only, it will probably be defined in the earlier part of the deed as " the trust fund," and the power will be given to the settlor only. If this is so substitute " the trust fund " for " the survivor's fortune " throughout the form. If, however, property is settled or agreed to be settled by reference to the trust fund, say " the trust premises, meaning thereby the trust fund," adding the words in either of the two following brackets as occasion requires, and substitute " the trust premises " for the " survivor's fortune " throughout the form.

(a) If any other property is settled by reference it should be included in the definition.

(b) In the case mentioned in note (f) on last page, add the following subclause : " If the survivor of the husband & wife

(ii.) The power of advancement applicable herto [hincbfe contd] in favour of any child or other issue of the now intended marre may be exercised witht regard to the possibility [of an apptmt of pt of the income being made to an after-taken husbd or wife or to the possibility] of the share of such child or other issue becomg ultimately diminished by reason of any apptmt being made under the power of apptmt lastly hincbfe contd (hincbfe called the power of withdrawal), [or by reason of any child of a future marre being born] after the date of such advance.

(iii.) Subjt & witht prejudice to any exercise of the power of withdrawal, the ppty thereby appted shl remain & be held Upon such of the trusts & subjt to such of the powers & provons hincbfe declared & contd concerning the same as shl be subsisting & capable of taking effect (c).

(iv.) If the survor of the husbd & wife shl marry more than once after the death of the other of them, & if by the effect of any apptmts made by such survor under the power of withdrawal, more than one moiety, or "such pt as is hincbfe mentd," of the capl of the survor's fortune wd but for this psnt proviso become vested in, payable to or charged in favour of any pson or psons (other than the issue of the now intd marre), the apptmts so made shl be void to the extent of such excess, & shl as betn themselves have priority acedg to their respive dates.

(v.) The pt of the survor's fortune wch may be appted under the power of withdrawal shl not exceed the proportion throf [the value] hincbfe mentd (that is to say) :—If there shl be *three* or more chln of the now intended marre, who being male attain the age of twenty-one yrs, or being female attain that age or marry, one eql *fourth* pt throf [the sum of £—], & if there shl be only *two* such chln one eql *third* pt throf

Variations where amount depends on number of children of intended

shl exercise both the powers lastly hincbfe contd, the share of income appted to a survg after-taken husbd or wife shl be pd primarily out of the income of the ppty appointed under the power lastly hincbfe contd in exoneron (as far as may be) of the ppty remaing subjt hto."

(e) As to the importance of appointing under the powers contained in the ultimate trusts of the wife's fortune in the settlement made on her first marriage, see *ante*, p. 532, note (g).

marriage
or both
mar-
riages (d).

[the sum of £——] & if there shl be only *one* such child, a *moiety* throf [the sum of £——].

(vi.) The pt of the survor's fortune weh may be appted under the power of withdrawal shl not, in the event of there being a child or chln of the now intended marre & a child or chln of any such subseqt marre as afsd, bear a greater proportion to the residue of the same fortune than the number of chln of any such subseqt marre or marres as afsd who being male attain the age of twenty-one yrs, or being female attain that age or marry, shl bear to the number of chln of the now intended marre, who being male attain the age of twenty-one yrs, or being female attain that age or marry.

(vii.) Any such apptmt as afsd may be made under the power of withdrawal while it shl be uncertain whether [or to what extent] the same will be capable of takg effect.

(viii.) The maximum amt of income for the time being payable to an after-taken husbd or wife under an apptmt under the power of withdrawal shl be regulated accordg to the number of chln of the now intended marre [& any such future marre or marres as afsd] who shl for the time being & from time to time be livg or shl have died after attaing vested intts as afsd & on the footing that all such chln for the time being livg have attained vested interests.

Power to
wife to
withdraw
part of
funds
from
settle-
ment, if
no child
or only
one (b).

2. (i.) If THE wife shl survive (a) the husbd, & there shl be [no child or] not more than *one* child of the intended marre who can or shl attain a vested intt in the trust premes under the trusts hrinbfe declared, the wife may (but subjt & witht prejudice to any irrevocable apptmt made under the power [either of the powers] hrinbfe contd of makg apptmts in favour of the issue of the intended marre) at any time after the death of the husbd, by any deed or deeds, revocable or irrevocable, or by will or codl expressly referrg to this power

(d) If the amount to be settled depends on the number of children of the present marriage only, add subclauses (v.), (vii.) and (viii.), and if it depends on the number of children of both marriages, subclauses (vi.), (vii.) and (viii.). If it should so happen that the ultimate trust is not for the survivor, add to subclause (v.) "But if there shl be no such child the whole of the survor's fortune may be so appted."

(a) See *ante*, p. 571, note (d).

(b) This may be varied according to the number of children of the intended marriage, as in the variations to form 1.

or the ppty subjt thereto, appt any pt of the wife's fortune [inclusive of any ppty becomg settled by virtue of the agrmt for the settlemt of her after-acquired ppty hrinbfe contd], not exceedg one moiety throf, to any pson or psons whomsr, & in such mner, & in trust for such pson or psons, & for such pposes in all respts as the wife shl think fit.

(ii.) & (iii.) *Subclauses (ii.) & (iii.) of f. 1, p. 573.*

3. (i.) THE WIFE may [by any deed or deeds revocable or of irrevocable executed prior to & in contemplon of any marre or] by will or codl appt that the income (bb) of the whole or of any pt of the wife's fortune [inclusive of any moys seed by the covt of the sd X. hrinbfe contd & the investmts throf & inclusive also of any ppty becoming settled by virtue of the agrmt hrinbfe contd for the settlemt of the wife's after-acquired ppty] shl from & after the death of the wife be pd to any husbd who may survive her during his life or any less period in such mner & subjt to such condons & restrictions as the wife may think fit (c).

Power to wife to appoint income to surviving husband.

(ii.) The wife may appt that if the paymt of the sd income to the husbd shl fail or be determined under a condon in such apptmt contd, the sd income shl, during the residue of the life of such husbd, be applied at the discreon of the trees for the benefit of the husbd & such other pson or psons as the wife may declare.

(iii.) The income so appted shl be paid in priority to all other paymts hrin directed to be made out of the trust premes after the death of the wife, & so that the power of advancemt applicable hrto [hrinbfe contd] in favour of the chln [or issue] of the now intended marre shl not be exercised after such apptmt shl have been made so as to affect the intt of such husbd witht his consent in writg.

4. (i.) THE SD, *setilor*, may at any time or times hrafter by any deed or deeds revocable or irrevocable or by will or codl

Power of revocation (d).

(bb) See *post*, p. 792, note (e).

(c) As to the effect of divorce on a trust for the surviving husband or wife, see *Bullmore v. Wynter*, 22 Ch. D. 619; *Re Morrieson*, 40 Ch. D. 30; *Duchess of Marlborough v. Duke of Marlborough*, [1901] 1 Ch. 165; *Re Pilkington's Settlement* (1923), 129 L. T. 629.

(d) This provision is intended for insertion in a voluntary settlement: see *post*, p. 634, note.

As to the stamp on a resettlement under a power of revocation, see *Russell v. I. R. Commrs.*, [1902] 1 K. B. 142.

expressly referring to this power or the ppty subj't thereto appt such new or other trusts of & concerning the trust fund [the ppty hby settled or any pt or pts throf] as he may think fit (e) [for the benefit of all or any to the exclusion of the other or others of the followg psons, namely, [the psnt or] any future wife of the sd, *settlor*, or his chln or remoter issue by her or his collateral relatives (f)].

Restric-
tion as to
exercise
of power.

[(ii.) Provd always that the power of apptmt lastly hrinbfe contd shl not be exercisable witht the consent in writing of the trees given under the advice of the Chancery Division of the High Court of Justice. Provd nevertheless that if the settlor shl make a written request to the trees to apply for such advice & the trees shl not make such applicon within three calr months from the receipt by them of such request the settlor may exercise such power witht such consent.

Clause
putting
infant
wife to
her
election
to con-
firm
settle-
ment (g).

5. THE WIFE shl, upon attaing the age of twenty-one yrs, or at any time thrafter at the request in writg of the trees, or the husbd, execute & do, at the expse of the wife's fortune, all such deeds, instrumts, acts, & things as may be necy or pper for effectually confirmg this deed & vestg in or transferrg to the trees the wife's fortune & all other ppty intended to be hby settled by the wife, wch wd be bound by the agrmts & provons hrinbfe contd if the wife had now attained the age of twenty-one yrs, to the satisfon of the trees, whose decision as to whether or not this condon has been effectually complied with shl be conclusive, & if the wife shl refuse or neglect so to do upon such request as afsd, she shl thenceforth be deprived of all benefit hrunder, & the income & capl of the husbd's fortune [& the moys to be received in respt of the pols hby settled & the moys seed by the covt of the sd X. hrinbfe contd & the investmts representing such moys resply] shl be

Estate
duty.

(e) The foregoing words confer a general power which, if existing at the settlor's death, will render the settled property liable to estate duty: *Fin. Act, 1894, ss. 2 (1) (a) and 22 (2) (a)*; *Earl Grey v. Att.-Gen.*, [1900] A. C. 124; *O'Grady v. Wilmot*, [1916] 2 A. C. 231. The power may nevertheless be general, although the consent and concurrence of the trustees be required for its exercise: *Re Dilke*, [1921] 1 Ch. 34.

(f) If the words in this bracket are inserted the power becomes a special power.

(g) As to settlements by infants, see note to *Prec. VI., post*, pp. 598, 603, note (c). This provision must, of course, be adapted to the provisions of the particular settlement.

held Upon the trusts & with & subjt to the powers & provons upon with & subjt to weh the same wd for the time being be held if the wife were then dead [witht havg exercised any genl power of apptmt over any of the trust premes hby settled or agrd to be settled as last afsd hrinbfe given to her].

6. IF AT the expiron of thirty yrs from the date hrof no issue of the intended marre shl be living the trees may with the consent in writing of the husbd & wife by any deed or deeds revocable or irrevocable wholly or partially revoke the trusts hrinbfe declared concerning the ppty hby settled or agrd to be settled or such pt throf as shl not have become vested in some issue of the intended marre, & from & after such revocation the trees shl stand possed of the wife's fortune or such pt throf as shl not have become so vested In trust for the wife absolutely & shl stand possed of the husbd's fortune or such pt throf as shl not have become so vested In trust for the husbd absolutely.

Power to trustees to revoke settle-ment.

POWERS (a) AND INDEMNITY TO TRUSTEES (b).

1. ANY BONUS or bonuses weh may from time to time be declared in respt of any shares or stock for the time being

Bonuses to be

(a) Several of the clauses formerly inserted in settlements and wills for the purpose of giving powers and indemnities to trustees are no longer necessary in view of the provisions of the T. Act, 1925, and it has not been thought that it would serve any useful purpose to insert express clauses to the same effect as the provisions of the statute.

Statutory powers and indemnities of trustees.

The following forms which appeared on the several pages below mentioned in the eleventh edition of this work have been omitted in reliance on the statutory provisions, viz. powers to (i) pay trust money into a deposit account, p. 655, f. 1 (see T. Act, 1925, s. 11); (ii) allow wife's income to be received by a banker or agent, p. 655, f. 2 (see s. 23); (iii) to pay calls on shares and as to preferential right to take stocks or shares, p. 656, f. 3 (see s. 10 (4), (5)); (iv.) deposit deeds, &c., for safe custody, p. 657, f. 6 (see s. 21); (v.) to value trust property, p. 657, f. 7 (see s. 22); (vi.) apportion blended trust funds, p. 657, f. 8 (see s. 15 (b)); (vii.) settle accounts, &c., and as to reversionary interests, p. 658, f. 10 (see s. 22); (viii.) employ agents, p. 660, f. 12 (i) (see s. 23); (ix.) have accounts audited, p. 661 f. 13 (see s. 22 (4)); (x.) trustees' receipt clause, p. 662, f. 14 (see s. 14); (xi.) trustee's indemnity and reimbursement clause, p. 662, f. 15 (see ss. 8 (2), (3), and 30); (xii.) trustees' indemnity in respect of payments,

(b) For powers to trustees as to investments, see *ante*, pp. 534 *et seq.*; as to policies, *ante*, pp. 554 *et seq.*; and as to land, *ante*, pp. 546 *et seq.*

income . . . subj't to the trusts hrof shl be applied as if it were income
(c). arising from the sd shares or stock.

Provision for one of the trustees being named first on register (d). **2. WHERE ANY** stocks, shares or other investm'ts are registered or inscribed in the books of any Company or public body in the names of the trees, the name of the sd X. while he remains a tree shl if desired by him be placed first in such

p. 664, f. 16 (vi) (see s. 15); and (xiii.) delegate trusts to resident trustees, p. 665, f. 19 (see s. 25).

Indemnity on distribution.

Section 26 of the T. Act, 1925, amended by the schedule of the L. P. (Amendment) Act, 1926, enables personal representatives or trustees to relieve themselves of liability under covenants either absolute or by way of indemnity against absolute covenants contained in a lease or in a grant made in consideration of a rentcharge held by the testator or intestate or settlor, and which for which the personal representatives or trustees are liable as such. After satisfaction of all liabilities under the lease or grant which may have accrued and been claimed up to the time of conveyance or distribution, and after setting aside where necessary a sufficient fund to answer future claims that may be made in respect of any fixed and ascertained sum agreed by the lessee or grantee to be laid out on the property demised or granted, although the time for laying out such sum may not have arrived, the personal representatives or trustees may convey the property demised or granted to a purchaser, devisee, legatee, or other person entitled thereto, and may distribute the residue of the real and personal estate or, as the case may be, the trust estate, other than the fund set aside, without any further appropriation for future liability under the lease or grant. Personal representatives or trustees acting in accordance with the provisions of this amended section are exempt from personal liability in respect of subsequent claims under the above-mentioned covenants. The right of the lessor or grantor and the persons deriving title under them respectively to follow the assets of the deceased or the trust property into the hands of the persons among whom they have been distributed is saved by sub-s. (2), notwithstanding anything to the contrary contained in the will or other instrument constituting the trust.

The expression "lease" is defined by sub-s. (3) to include an underlease and an agreement for a lease or underlease, and "grant" applies to a grant whether the rent is created by limitation grant reservation or otherwise and includes an agreement for a grant.

As to the protection afforded by advertisement in the Gazette prior to a conveyance to or distribution among the persons entitled to any real or personal property, see T. Act, 1925, s. 27, as amended by the L. P. (Amendment) Act, 1926, and *ante*, p. 338.

(c) As to the question whether, apart from express provision, new shares represent capital or income, see *Bouch v. Sproule*, 12 App. Cas. 385; *Re Malam*, [1894] 3 Ch. 578; *Re Piercy*, [1907] 1 Ch. 289; *Re Evans*, [1913] 1 Ch. 23; and see *Re Nisbet*, 55 Sol. J. 536; *Re Palmer*, 56 Sol. J. 363; discussed *ib.* 376; *Re Thomas*, [1916] 2 Ch. 331; *Re Hatton*, [1917] 1 Ch. 357, and Withers on Reversions, 85; Lewin, 12th ed., 877.

(d) A company cannot object to enter the Public Trustee's name on its books by reason only that he is a corporation, nor does such entry constitute notice of a trust: Public Trustee Act, 1906, s. 11 (5).

register or book so as to secure to him the right of voting or privileges thence arising.

3. THE TREES may apportion any mōy pd or applied under any statutory or express power applicable hrtō rateably between the husbd's fortune & the wife's fortune & (f) subjt to any statutory diron in that behalf (g) may determine whether any mōy shl for the pposes of this deed be considered as capl or income & out of what pt of the trust premes & whether out of income or capl, any expses, outgoings or losses shl or ought to be pd; AND may determine as they shl consider just all questions & matters of doubt arisg in the execution of the trusts hrof, & every such determinon, whether made upon a question actually

Power to apportion payments and settle questions (e).

(e) Where two trust funds were inextricably mixed, and a large profit had arisen on investments, the profit was apportioned in *Stoddart v. Savile*, 38 Sol. J. 79; and see *Provost of Edinburgh v. Lord Advocate*, 4 App. Cas. 823.

The T. Act, 1925, ss. 15 and 22, gives to two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where a sole trustee is authorised to execute the trusts, large powers of compromising, settling accounts, &c., and the Public Trustee is in the same position as an ordinary trustee: *Re New Haw Estate*, 56 Sol. J. 538. The section imposes the exercise of an active discretion on the trustees: *Re Greenwood*, 105 L. T. 509. The power in the text may be useful in case of questions as between tenant for life and remainderman as to the right to bonuses or extraordinary profits on shares: see *ante*, p. 578, note (c); or arrears of cumulative interest or dividends: *Re Taylor*, [1905] 1 Ch. 734; *Re Sale*, [1913] 2 Ch. 697. As to how expenses or losses should be apportioned, see *Re Hengler*, [1893] 1 Ch. 586; *Re Bennett*, [1896] 1 Ch. 778; *Re Bird*, [1901] 1 Ch. 916; *Re Sherry*, [1913] 2 Ch. 508.

Statutory powers of settling accounts, &c.

(f) Where there is only one fund this form will commence "The trees may determine subject," &c., as in the text.

As to the apportionment of money received on the realisation of a trust mortgage where interest is in arrear, see *Re Broadwood*, [1908] 1 Ch. 115; *Re Coaks*, [1911] 1 Ch. 171.

(g) The T. Act, 1925, directs payments and receipts out of and by the trust funds to be borne and accrue as follows: by and to income (i.) fees payable for deposit of bearer securities with a bank (s. 7 (2)); (ii.) interest on money deposited at a bank (s. 11 (i)); (iii.) premiums on fire insurance (s. 19 (1)); and (iv.) maintenance (s. 31); by and to capital (i.) proceeds of sale of premiums on new shares to which the trust has a preferential right to subscribe (s. 10 (4)); (ii.) advancement (s. 32); and (iii.) policy moneys received under an insurance policy effected in exercise of the statutory power or otherwise (s. 20 (i)). The fees payable for valuation of the trust funds may be paid partly out of income and partly out of capital as the trustees think fit, but in default of direction by the trustees are borne by the fund to which they are attributable: s. 22 (4).

Statutory apportionment where statutory powers exercised.

raised or implied in the acts or proceedings of the trees shl be conclusive, & bind all psons interested hrunder (a).

Provision as to recouping moneys paid out of the fortune of one spouse for the benefit of the other (b). Power to raise costs of settlement, &c. (c).

4. IF MOYS forming pt of the husbd's fortune or of the wife's fortune shl be applied in or towards paymt of moys that ought primarily to be pd out of the other of such fortunes such moys with intt at the rate of £— p.c. p.a. from the date of application shl be recouped out of moys forming pt of the last-mentioned fortune & until so recouped shl be charged thron.

5. THE TREES shl with all convenient speed raise by the sale of a sufft pt of the wife's fortune & pay [the costs of the marre outfit of the wife & the expses connected therewith &] the costs & expses of the negotiation, preparon, execution by all pties and stamping of this deed [& of the sd convce of even date herewith & the recited deed poll]. *For registered land add* “ & of the registron of the trees under the L. R. Act, 1925, as proptors of the land assured by the sd instrumt of transfer & of entering on the register the pper restrictions.”

Power for professional trustee to charge (d).

6. [The sd X. or] any tree for the time being hrof being a solor or other pson engaged in any profession or business shl be entitled to charge & be pd all usual professional or other charges for business done by him or his firm in relation to the

(a) See *Eaton v. Buchanan*, [1911] A. C. 253.

(b) This provision may be inserted where the trustees are given power to spend or raise money out of both trust funds (e.g. for the upkeep of a policy, or to purchase land or a house).

Costs settlement.

(c) Unless otherwise arranged, the costs of the settlement are, according to usage, payable by the husband, whether the wife is of age or an infant: see *Helps v. Clayton*, 17 C. B. (N. S.) 553. See the Law Society's suggestions as to costs, 47 Sol. J. 674.

The husband's liability does not appear to be altered by the M. W. P. Act, 1882, s. 14: see *Re Lawrance*, [1894] 1 Ch. at p. 559; Elph. Introd., 7th ed., 556. As to the costs of a settlement made with the approval of the Court, see *De Stacpoole v. De Stacpoole*, 37 Ch. D. 139.

As to the husband's liability for the wife's ante-nuptial debts, see *Beck v. Pierce*, 23 Q. B. D. 316; and as to the wife's liability, see M. W. P. Act, 1882, s. 13.

If any question is likely to arise, or it is desired to relieve the husband, the insertion of the provision in the text may be expedient.

As to the solicitor's right to a lien for the costs, see *Re Lawrance*, [1894] 1 Ch. 556.

Right of trustees—to charge

(d) As to this provision, see 47 Sol. J. 6 and 25; *Clarkson v. Robinson*, [1900] 2 Ch. 722; *Re Chalinder & Herington*, [1907] 1 Ch. 58. It will not be required in a settlement of which the Public Trustee is sole trustee, nor will the Court sanction it in settlements under the Infant Settlements

trusts hrof [& also his reasonable charges in addition to disbursements for all other work & business done, & all time spent by him or his firm in connection with matters arising in the premes, including matters wch might or shd have been attended to in pson by a tree not being a solor or other professional pson, but wch such tree might reasonably require to be done by a solor or other professional pson.]

7. (i.) IN ADDITION to the ordinary indemnity given by law to trees the trees may [pchase or] lend on the secy of any ppty with less than a marketable title wtht being liable for any loss occasioned thereby (f).

Clause extending statutory indemnity of trustees (e).

(ii.) The trees shl be under no responsibility whatsr with respt to the paymt of the rent or the observance or pformce of the covts & condons contd in the recited lease or any losses, costs, damages or expses occasioned by non-paymt of the sd rent or the breach of any of the sd covts & condons, & they & each of them shl be entitled to be indemnified & reimbursed in the fullest manner out of the trust premes in respt of all costs, damages & expses incurred by them or him in relation to the sd leasehd premes or any pt throf.

In respect of leaseholds.

(iii.) The trees shl not be chargeable or responsible for any omission or neglect to enforce any covt hrinbfe contd in relation to any poly for the time being subjt to the trusts hrof or to keep up or restore any such poly or effect any new poly psuant to the provons hrinbfe contd or for any such poly lapsing or becoming void by any means whatsr.

In respect of policy (g).

Act, 1855. Trustees cannot settle the amount due to one of themselves for business done under this clause so as to bind the beneficiaries: *Re Fish*, [1893] 2 Ch. 413, decided on a wider form. An express power for this purpose might be added, but it seems of questionable expediency.

professional charges.

Provision for payment of a salary in lieu of professional charges may be added if desired, see f. 11, *post*, p. 835.

As to whether the liability of a trustee is increased by his being paid for his services, see 50 Sol. J. 72.

(e) See *ante*, p. 577, note (b), and T. Act, 1925, ss. 8, 30.

(f) Having regard to the risk of losing consents to the exercise of a trust or power which are often given informally, it may be convenient to add here " & after the lapse of six yrs from the pformce or exercise by the trees of any trust or power contd in or conferred by this deed, it shl be assumed, in the absence of proof to the contrary, that every consent or request required by this deed to such pformce or exercise was duly given & made."

(g) This subclause will be omitted if f. 8, p. 556, is inserted.

In respect
of insur-
ance.

(iv.) The trees shl not be bound to see to the repair or insee against loss or damage by fire of any bldgs wch may for the time being be subjt to the trusts hrof or be responsible for any loss wch may be occasioned by any failure to repair or insure the sd bldgs or any of them.

In re-
spect of
counsel's
opinion.

(v.) The trees shl not be chargeable or responsible for loss occasioned by any act or thing done or omitted to be done by them under the advice of counsel of not less than 10 yrs standg nominated by the President of the Law Society.

In-
demnity
to trus-
tees of
settled
chattels
(a).

8. (i.) ALL PAYMTS pperly made by the trees, togr with intt thron at the rate of £— p.c. p.a. from the time of paymt, shl be charged in favour of the trees on the — hby settled or agrd to be settled, with power for the trees to sell the same or any of them & to retain out of the proceeds of such sale all moys due to them after paying the costs of such sale.

(ii.) The trees shl hold the surplus proceeds (if any) of such sale Upon trust to invest the same & to pay the income arising therefrom to the pson or psons for the time being entitled to use the sd —, & subjt thereto shl hold the sd investmts In trust for the pson or psons who shl become absolutely entitled to the sd —.

In-
demnity
against
acts of
Public
Trustee
(b).

9. THE PSON or psons who shl at any time be a tree or trees hrof jointly with the Public Trustee may do any act or execute any instrumt for the ppose of enabling the Public Trustee (either alone or jointly with him or them) to control or manage the trust ppty or any pt throf, & shl only be liable for his or their own wilful default or fraud & not for any loss that may occur through the act or default of the Public Trustee.

(a) This provision is intended for insertion in a settlement of movable chattels alone.

(b) This provision is sometimes inserted where several trustees are appointed, one of whom is the Public Trustee, as the indemnity given by the Public Trustee Act, 1906, s. 7, only applies to the Public Trustee, but the Public Trustee usually objects to it.

APPOINTMENTS OF NEW TRUSTEES AND MISCELLANEOUS.

1. If, & so often as, the trees herein named, or any of them, or any tree or trees appointed under this present power, or by any Court, shall die or remain out of the United Kingdom of Great Britain & N. Ireland for more than twelve calendar months, or desire to be discharged from, or refuse or become unfit or incapable to act in the trusts of this deed, it shall be lawful for the husband & wife, or the survivor of them, & after the death of such survivor for the surviving or continuing trees or tree for the time being (& for this purpose any retiring or refusing tree shall, if willing to act in the exercise of this power, be considered a continuing tree), or for the personal representatives or representative of the last surviving or continuing tree, to appoint a new tree or trees in the place of the tree or trees so dying or remaining out of the United Kingdom aforesaid or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid: And upon every such appointment the number of trees may be increased or diminished, but not to less than two, & upon every such appointment the trust property shall, as soon as circumstances will admit, be transferred to or vested in the trees or tree for the time being, but every new tree may, as well before as after the trust property shall have been so transferred, or vested, execute all the trusts & powers of this deed in the same manner as if he had been hereby constituted a tree.

Power to
appoint
new trustees (a).

2. THE POWER of appointing a new tree or new trees hereof shall be vested in the husband & wife during their joint lives, & in the survivor of them during his or her life (b).

The
same :
short
form (a).

(a) As to the statutory powers of appointing new trustees, or an additional trustee, see Vol. I., p. 119; as to the power of the Court to appoint a judicial trustee under the Judicial Trustees Act, 1896, s. 1, see Vol. I., p. 128; and as to the appointment of the Public Trustee as trustee or custodian trustee under the Public Trustee Act, 1906, see Vol. I., pp. 123, 158.

(b) Where the husband is domiciled abroad in a place where trusts are not recognised add "but no person shall be appointed a tree hereof who is domiciled or resident out of the United Kingdom of Great Britain & N. Ireland." The provision in the text is the usual power in personalty settlements, but it is sometimes vested in "the person or persons in whom the said power is vested by the statute in that behalf with the consent of the husband & wife, during their joint

Varia-
tions.

The same where each settlor is to supply the place of the trustee nominated by him or her.

3. THE POWER of apptg a new tree hrof in the place of the sd M., or of any tree or trees succeedg mediately or immedly to his place, shl be vested in the husbd durg his life, & after his death in the wife if survivg durg her life, & the power of apptg a new tree or trees hrof in the place of the sd N., or of any tree or trees succeedg mediately or immedly to his place, shl be vested in the wife durg her life, & after her death in the husbd if survivg durg his life, & on any apptmt not more than one tree shl be apptd to fill up one vacancy.

Power to any trustee to retire from trustee-ship (d).

4. IF ANY tree shl at any time be desirous of withdrawg & being discharged from the trusts hrof he may do so by writg under his hand given to the husbd & wife, or to the survor of them, & after the death of such survor to the other trees or tree for the time being hrof, & such notice shl operate as

lives & of the survor of them durg his or her life, & after the death of such survor at their or his discreon," or in "the husbd durg his life & after his death in the pson for the time being entitled to the income of the trust premes, if of full age, & if there shl be no such pson, then in the pson or psons in whom the sd power is vested by the statute in that behalf."

The following is occasionally added:—"PROVD ALWAYS & it is the express intention of the pties hto that whenever a vacancy shl happen in the number of the trees hrof by death or any other means, a new tree or new trees shl forthwith be apptd to fill such vacancy so that the number of the actg trees shl never be less than three." Notwithstanding this provision, the Court has power to appoint the Public Trustee to be sole trustee under the Public Trustee Act, 1906, s. 5, or two trustees or a sole trustee under T. Act, 1925, s. 41; and the donee of the power can, according to *Re Leslie*, [1911] 1 Ch. 611, under s. 36 of that Act, and s. 5 of the Public Trustee Act, 1906, himself appoint the Public Trustee sole trustee; but the Public Trustee will not usually, in such a case, accept the trusteeship.

If thought fit, add, "PROVD NEVERTHELESS that all acts & proceedings on the pt of the trees or tree for the time being hrof shl be valid & bindg on all pties, notwithstdg that the number of the actg trees may be less than three."

See other forms, *post*, p. 852, and *ante*, p. 495.

As to right of trustee to retire.

(d) This clause enabling a trustee to retire as of right at the expense of the trust estate, without the appointment of a new trustee, and without the consents required by the T. Act, 1925, s. 39, is, of course, very unusual. As to the costs of retirement, see *Re Beveridge*, 43 Sol. J. 509. See precedent for use on the retirement of a trustee, Vol. I., p. 157.

an effectual relinquishmt of the trust, & the tree givg the same shl thrupon cease to be a tree to all intents & pposes except as to the acts & deeds necy for the pper vestg of the trust ppty in the continug trees or tree, or orwise as the case may require, weh shl be executed & done at the expse of the trust este.

5. ALL THE PTIES hto & parlarly the husbd hby agree & declare that this deed shl be construed, & that the rights of all psons claiming hrunder shl be regulated, according to the law of England in the same mner as if the husbd were now domiciled in England & as if the husbd & wife were to remain henceforth during their respective lives domiciled in England, & that any power of appointmt hereby made exer-

Declar-
ation as to
construc-
tion
where
husband
not domic-
iled in
England
(a).

Where the Public Trustee has been appointed a trustee under the P. T. Act, 1906, s. 5, a co-trustee may retire in this manner, notwithstanding that there are not more than two trustees: P. T. Act, 1906, s. 5 (2); and see Vol. I., p. 124.

Public
Trustee.

(a) This clause should be added where the husband is not domiciled in England. Dicey, Conflict of Laws, 4th ed., pp. 565-569, 715-716. As to the meaning of "domicile," see *post*, p. 393, note, and the cases collected, Seton, 7th ed., 1518.

If the marriage is dissolved by a Scottish or foreign court a declaration to the effect in the text will prevent the application of Scots or foreign law to the settlement after divorce: *Montgomery v. Zarifi*, [1918] S. C. (H. L.), 128.

In the absence of this provision, a testamentary power over personally conferred by an English instrument on a person domiciled abroad can be exercised (1) by a will made in a form valid by English law though invalid by the law of the domicile: *In b. Huber*, [1896] P. 209; *Re Megret*, [1901] 1 Ch. 547; *Re Baker*, [1908] W. N. 161; *Murphy v. Deichler*, [1909] A. C. 446; (2) by a will made in a form valid by the law of the domicile but invalid by English law: *Re Price*, [1900] 1 Ch. 442; *Re Walker*, [1908] 1 Ch. 560; *Re Wilkinson's Settlement*, [1917] 1 Ch. 620; *Re Lewal's Settlement Trusts*, [1918] 2 Ch. 391; unless in the latter case formalities required by the power are not complied with: *Barretto v. Young*, [1900] 2 Ch. 339. In a will made abroad, either by a British subject or a foreigner, but admitted to probate in England, s. 27 of the Wills Act operates to make a general gift of personal estate an exercise of the power in the absence of a contrary intention: *Re Simpson*, [1916] 1 Ch. 502.

Effect of
foreign
domicile
on testa-
mentary
power.

When a will can only be admitted to probate under the provisions of Lord Kingsdown's Act, the power will not be exercised unless the formalities prescribed by the Wills Act, 1837, are complied with: *Re Kirwan*, 25 Ch. D. 373; *Hummel v. Hummel*, [1898] 1 Ch. 642; as explained in *Re Wilkinson's Settlement*, *supra*, at p. 627.

The cases, down to December 11, 1911, upon the effect of the exercise by will of a general power of appointment by a testator domiciled abroad are collected in 56 Sol. J. 104. See generally Appendix II., On Domicile, in Hayes and Jarm., 14th ed., pp. 455 *et seq.*

cisable by will or codl may be exercised by will or codl executed in such mner as to be valid as such according to the law of the domicile of the testor or testatrix at the time of his or her death, or by any writing purporting to be a will or codl executed in such mner that the same wd be valid as such according to the law of England if such testor or testatrix were at the time of his or her death domiciled in England, & so that in the case of the wife such will, codl or writing shl be valid whether she shl be covert or sole.

Provision
restrict-
ing
liability
under
statutory
covenant
"as
settlor"
(b).

6. PROVD ALWAYS that the covt wch is implied by the husbd [wife] conveying & being expressed to convey as settlor shl not render him [her] or any pson deriving title under him [her] liable to discharge or get in any incumbrance or este not created by him [her] or any such pson.

Nomina-
tion of
trust cor-
poration
to receive
notices
(c).

7. NOTICES OF dealgs affectg any ppty for the time being subjt to the trusts of this deed may be given to The ——— Bank Ltd.

8. IN THIS deed where the context so requires or admits the expression "the trees" shl include the trees or tree for the time being hrof.

Interpre-
tation
of "the
trustees"
(d).

9. THE NOTES in the margin hrof are for convenience of reference only & shl not affect the construction hrof.

Marginal
notes.

(b) Where the title is not investigated, it may be safer in settlements of land to insert this provision, having regard to the difficulty mentioned, *ante*, p. 508, note (a).

(c) See L. P. Act, 1925, s. 138, and *ante*, p. 323, note (d).

(d) The words in this provision are unnecessary for the purpose of showing how the trusts and powers are to devolve, but they are of importance in cases where, as in the covenant to settle after-acquired property or the indemnity clauses, something is to be done or given to "the trustees," meaning the trustees for the time being. See *Re Smith*, [1904] 1 Ch. 139; *Re De Sommery*, [1912] 2 Ch. 622. By s. 18 (1) of the T. Act, 1925, a trust devolves on the death of a trustee upon the surviving trustees or trustee. By s. 18 (2) of the same Act, a trust vested at his death in a sole trustee devolves upon his personal representatives, who can, until the appointment of new trustees, exercise any power or perform any trust given to or capable of being exercised by him, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation.

I.

SETTLEMENT *on* MARRIAGE (a) of STOCK EXCHANGE
SECURITIES *belonging to both* SPOUSES. VARIATIONS
where the PUBLIC TRUSTEE is appointed TRUSTEE (b).

THIS SETTLEMENT made the — day of —, BETWEEN A. Parties.
of, &c. (hereinafter called the husband), of the 1st pt, B. of, &c. (hereinafter
called the wife), of the 2nd part, & C. of, &c., D. of, &c., & E.

(a) As to the negotiation of a marriage settlement see *Elph. Introd.*,
7th ed., 548; 47 *Sol. J.* 5, 24; 13 *Encycl. Prec.* 227; and as to the intended
wife having separate advice independently of her parents, see *Tucker v.*
Bennett, 38 Ch. D. 1.

(b) Where it is intended to appoint the Public Trustee as the sole trustee
of a marriage settlement or jointly with others, a draft of the settlement
should be submitted to him for approval. No charge is made by him for
perusing it. The settlement should be in the ordinary form except that
where he is appointed the sole trustee, "the Public Trustee" will be sub-
stituted throughout for "the trustees," and clauses 8, 10 and 11 should be
omitted; and that where he is one of several trustees, an indemnity to the
other trustees against his acts should if possible be inserted as at p. 582,
f. 9.

Where
Public
Trustee
is ap-
pointed
trustee
of settle-
ment.

It is not the practice of the Public Trustee to accept a trust which only
comprises foreign or colonial land if it is desired to retain such land.
Where, however, the settlement contains a power to purchase or lend
money on land of this nature, together with a full indemnity to the
trustees on making such an investment, it is believed that he will consider
each case on its merits.

Where the Public Trustee is the sole trustee, all securities and docu-
ments belonging to the trust (which appears to include the settlement
itself) must be kept at the bank to the trust, or at some other place of
deposit allowed by the Treasury: P. T. Rules, 1912, r. 18. Where he is
not the sole trustee, the place of deposit will be arranged by the Public
Trustee and the other trustees. The rules do not state by whom the bank
to the trust is to be appointed; but in practice it will be by the tenant
for life with the approval of the trustees or of the Public Trustee if he is
the sole trustee.

Custody
of docu-
ments.

As to the appointment of the Public Trustee as a trustee or as sole
trustee of an existing settlement, see Vol. I., pp. 123, 124; as to the appoint-
ment and rights of a custodian trustee, see Vol. I., p. 159; and as to the
form of limitation to the Public Trustee where he is either the sole or one
of the trustees, see *ante*, p. 543. The old difficulty that property assured
to the Public Trustee while that office was vacant would not vest in a newly
appointed Public Trustee is met by s. 180 (1) of the L. P. Act, 1925, which
provides that any property vested in a corporation sole including the Crown
shall, unless and until otherwise disposed of by the corporation, pass to,
devolve on, be vested in, and be deemed always to have passed, devolved,
and become vested in the successors from time to time of such corporation.

Recitals. of, &c. (hrinar called the trees), of the 3rd part. *Recite intended marre*, p. 501, f. 1; *transfer of stocks*, p. 502, f. 3; [statement of value for stamp duty, p. 502, f. 7]; *general agrmt*, p. 508, f. 23. NOW THIS DEED made in psuance of the sd agrmt & in conson of the intended marre WITNESSETH as follows :—

Wit-
nesseth.

1. *Trust for investmt of “the sd ppty so transferred [or delivered] to them as afsd,” & power to vary*, p. 512, f. 2.

2. *First life interest to husbd & wife respby, & life interest to survivor*, p. 515, f. 3, *distinguishing the ppty by reference to the Schedules*.

3. *Power of apptmt on death of survivor*, p. 522, f. 14, & *trust in default of apptmt*, p. 524, f. 15.

4. *Hotchpot clause*, p. 525, f. 17.

5. *Ultimate trusts*, p. 531, f. 26.

6. *Investment clause*, pp. 537 et seq.

7. *Power to apportion payments*, p. 579, f. 3.

8. *Power for professional trustee to charge*, p. 580, f. 6.

[9. *Nomination of trust corporation to receive notices*, p. 586, f. 7.]

10. *Power to appoint new trustees*, p. 583, f. 2.

11. *Interpretation of “trees,”* p. 586, f. 8.

IN WITNESS, &c.

Schedules.

Fees.

See also A. of E. Act, 1925, s. 3 (5), as to the devolution to the successor on the death of a corporator sole. The fees to be charged by the Public Trustee are regulated by the P. T. (Fees) Order, 1926, S. R. & O., 1925, 1268 L. 46, [1926] W. N. pt. 2, 32. See as to the incidence of the “income fee” *Re Bentley*, [1924] 2 Ch. 456. Rule 20 of the P. T. Rules, 1912, ([1912] W. N. 173), provides that all payments of money to or from the capital of the trust property shall be made to the bank of the trust estate. A question arises whether that rule supersedes the power to receive money given to a solicitor by the L. P. Act, 1925, s. 69 (see note, Vol. I., p. 478), a provision which is extended to the solicitor of a trustee by the T. Act, 1925, s. 23; but the rule probably only requires, and the practice is, that the money, when received by the solicitor, should be paid into the bank.

Payment
of trust
money.

Regis-
tration of
Public
Trustee
as owner
of stock,
&c.

Where the Public Trustee is registered as the owner of Government stock or shares or debentures of a company as a general rule the words “& his successors” are not allowed to be registered.

II.

SETTLEMENT (a) on MARRIAGE of STOCK EXCHANGE SECURITIES belonging to the WIFE and a POLICY of ASSURANCE on the LIFE of the HUSBAND (b). VARIATIONS for an ENDOWMENT POLICY and for a POSTNUPTIAL SETTLEMENT in pursuance of MARRIAGE ARTICLES (c). AGREEMENT to settle AFTER-ACQUIRED PROPERTY of the WIFE.

PARTIES, as in Prec. I., p. 587. Recite intended marre, p. 501, f. 1; AND WHAS psuant to an agrmt entered into on the treaty Recitals. Agreement for

(a) Notice in the form *ante*, p. 323, of this settlement should be given to the insurance office under the Policies of Assurance Act, 1867, s. 3; and an acknowledgment of the receipt of the notice should be obtained under s. 6. Where the assignment is effected by a separate deed (see next Precedent), notice of the assignment only need be given. Notice.

(b) Owing to the increasing popularity of so-called "endowment" policies and the facilities now given by insurance offices for converting "whole-life" (and other) policies into "paid-up" policies or otherwise varying the original contract between the office and the assured, it is desirable in every case to consider the special terms of the policy and the question whether the trustees should have power to avail themselves of any options to convert, &c., given by the insurance office. As to policies of assurance.

(c) Where the settlement is made in pursuance of ante-nuptial articles, it is not the practice to recite or refer to them, but a recital of the marriage and the agreement for the settlement as at p. 501, f. 2, will be inserted, and since the marriage is a past event, slight modifications will be required throughout the draft. Where, however, the articles contain a provision for a declaration by the trustees in the settlement that it is to supersede the articles, say:—"WHAS by articles of agreemt made before the marre wch was shortly afterwards solemnised betn the husbd & wife it was agrd that a settlemt shd be made of the ppty hby settled in mner thrin mentd, & that a declaron by the trees in the sd settlemt to the effect that the same was intended to carry out or effectuate & to supersede the sd articles shd for all pposes & as against all psons interested be conclusive in that behalf." The settlement will in this case be expressed to be made "in psuance of the sd articles & in conson of the sd marre," and the following clause will be added:—"The trees hby declare that the settlemt effected by this deed is intended to carry out or effectuate & to supersede the sd articles." For a form of marriage articles, see *post*, p. 630. Variations for settlement in pursuance of articles.

settle-
ment and
transfer.

for the intended marre, the investments specified in the schdle hto, wch belong to the wife, have been transferred into the names of the trees in trust for the wife until the intended marre, & after the solemnison throf Upon the trusts hrinar declared concerning the same; [*statemt of value for stamp duty*, p. 502, f. 7]; *Title to & agrmt for settlemt of poly*, p. 506, ff. 17 or 18; *agrmt to settle wife's after-acquired ppty*, p. 508, f. 22; *general agrmt*, p. 508, f. 23. NOW THIS DEED made in psuance of the sd agrmt & in conson of the intended marre WITNESSETH as follows :—

Wit-
nessest.

1. *Assignmt of policy to trustees (d)*, p. 508, f. 1, & 510, note.

As to
assigning
policy by
separate
deed.
Stamp.

Having regard to the Stamp Act, 1891, s. 118, which makes an assignment of a life policy of no effect unless duly stamped, it may sometimes be desirable that the assignments should be by a separate deed, or that the stamp should be adjudicated, in order to preclude questions with the office or otherwise as to its sufficiency. As to the stamp duty upon a settlement of life policies, see s. 104. If the assignment is made by a separate deed, the *ad valorem* duty will be on the settlement, the assignment being chargeable only with a 10s. stamp, s. 106. The stamp is required whether the covenant to keep up the policy is contained in the settlement or in a separate deed: *Duke of Northumberland v. I. R. Commrs.*, [1911] 2 K. B. 1011.

Estate
duty.

As to estate duty on the policy, see *Att.-Gen. v. Dobree*, [1900] 1 Q. B. 442; *Att.-Gen. v. Hawkins*, [1901] 1 Q. B. 285; and as to the principle upon which it is imposed, see *Att.-Gen. v. Murray*, [1904] 1 K. B. 165; *Lethbridge v. Att.-Gen.*, [1907] A. C. at p. 23.

As to
settle-
ment of
policies
under the
M. W. P.
Act, 1882.

The M. W. P. Act, 1882, s. 11, enables a man or woman to effect a policy on his or her life for the benefit of his or her wife or husband and children or any of them, as expressed in the policy, so as to operate as a settlement thereof, and makes provision for the appointment of trustees; and in default of any such appointment of a trustee the policy is to vest in the insured and his or her personal representatives, in trust for the purposes expressed; and the receipt of the trustees or the personal representative, as the case may be, is to be a discharge to the office. As to various points arising on the section, see *Wolst. Conv. Acts*, 10th ed., 330, *Hood and Challis*, 7th ed., 467; *Griffiths v. Fleming*, [1909] 1 K. B. 805; *Re Ioakinidis' Policy*, [1925] Ch. 403; *Re Fleetwood's Policy*, [1926] Ch. 48. An after-taken wife and children by a future marriage are within the M. W. P. Act, 1882, s. 11, *Re Browne*, [1903] 1 Ch. 188; *Re Parker*, [1906] 1 Ch. 526. The husband can assign his interest under such a policy: *Robb v. Watson*, [1910] 1 Ir. R. 243. As to the validity of such policies against the creditors of the husband when a trader, see *Holt v. Everall*, 2 Ch. D. 266. Settlement policies under the Act are not extensively used, as the saving of expense (although the policy is not chargeable with *ad valorem* stamp duty as a settlement) is not usually sufficient to compensate for the possible inconveniences attending their use.

(d) This assignment will, of course, not be required where the policy is assigned by a separate deed or is effected in the names of the trustees.

2. If THE intended marre shl be solemnised the trees shl receive all moys assured by or to become payable under the sd policy of assurance on maturity (a).

3. *Trust for investmt of* "the investments specified in the schdle hto" & *power to vary, adding after the words* "moys produced thereby," "& also all moys wch may be received by the trees in respect of the sd poly," p. 512, f. 2.

4. *Trusts of wife's fortune*, p. 514, f. 2, *saying* "the investments specified in the schdle hto."

5. THE TREES shl pay the income of the sd poly moys when received & the ppty for the time being representing the same (hrinar called the husband's fortune) [to the husbd during his life, & after his death (b)] to the wife if survivg durg her life witht power of anticipon.

6. *Power of apptmt over both fortunes on death of survivor*, p. 522, f. 14, & *trust in default of apptmt*, p. 524, f. 15.

7. *Hotchpot clause*, p. 525, f. 17.

8. *Ultimate trusts*, p. 531, f. 26.

9. *Investment clause*, pp. 537 *et seq.*

10. *Covenant to keep up poly (c)*, p. 552, f. 2.

11. *Agrmt to settle wife's after-acquired ppty*, p. 563, f. 19.

12. *Power to apportion paymts*, p. 579, f. 3.

13. *Power for professional trustee to charge*, p. 580, f. 6.

14. *Trustees' indemnity*, p. 581, f. 7 (iii).

[15. *Nomination of trust corpn to receive notices*, p. 586, f. 7.]

16. *Power to appoint new trustees*, p. 583, f. 2.

17. *Interpretation of "trees,"* p. 586, f. 8.

IN WITNESS, &c.

The Schedule above referred to.

(a) This phrase is equally applicable to life and endowment policies.

(b) The words in this bracket should be used in the case of an endowment policy.

(c) Add any of the other policy clauses on pp. 554 *et seq.* which may be appropriate.

III.

ASSIGNMENT of LIFE or ENDOWMENT POLICY by
HUSBAND to TRUSTEES of MARRIAGE SETTLEMENT (d).

Recitals. *PARTIES*, A, *husbd* (e), 1; B, *wife* (e), 2; C, D & E, *trees* (h^rnar called the trees), 3. *Recite intended marre*, p. 501, f. 1; *title to & agrmt for settlmt of policy*, p. 506 f. 17. NOW THIS DEED made in psuance of the sd agrmt & in conson of the intended marre WITNESSETH that the sd, *husbd*, as settlor with the approbon of the sd, *wife*, hby assns unto the trees, *Parcels*, p. 510, *note*; *habendum*, p. 509, *with variation in note (c) on p. 511*. AND it is hby agrd that, &c., *continue power to appoint new trustees*, p. 583, f. 2. IN WITNESS, &c.

Wit-
nessest.

IV.

SETTLEMENT on MARRIAGE of WIFE'S MORTGAGE DEBT
and REVERSIONARY SHARE under her PARENT'S SETTLE-
MENT and an APPOINTMENT (f) and of POLICIES (g)

(d) As to the stamp, notice, and generally, see notes to last Precedent.

(e) The intended husband and wife should be described throughout this deed by their proper names, instead of as "husband" and "wife."

(f) The appointment is usually made by a separate deed, which is the more convenient practice, and attended with little additional expense. For forms of appointments, see Vol. I., pp. 88 *et seq.* The Bankruptcy, &c., Act, 1914, s. 42, invalidating settlements of future-acquired property, does not apply to a settlement of a reversionary share under an existing settlement to which the settlor may become entitled under a future appointment: see *Re Andrews*, 7 Ch. D. 635.

Estate
duty. Estate duty will be payable on the wife's death on her reversionary share notwithstanding that such duty was paid on the death of one of her parents who died before her: *Att.-Gen. v. Hay*, [1899] 2 Q. B. 245.

Stamp
on settle-
ment of rever-
sionary
interest. As to the stamp in respect of the reversionary interest, it has been decided that a settlement of a reversionary share in a trust fund is a settlement of a "definite and certain sum" (see the Stamp Act, 1891, Sched. SETTLEMENT), notwithstanding a power in the original settlement to vary securities, and notwithstanding that the interest is contingent or defeasible, *Onslow v. I. R. Commrs.*, [1891] 1 Q. B. 239; the Court refused to accede to the argument (which seems plausible), that "definite" refers to the amount of the fund and "certain" to the title of the settlor; the decision, if pursued to its logical results, requires that a settlement by the eldest of ten children (the other nine being all infants) of the share and interest of the settlor in a fund held in trust for such of the children as attain twenty-one, must be stamped with duty on the whole fund. In practice the duty would be assessed on one-tenth of the fund, though the share might be increased by the deaths of some of the other children or decreased by the birth of more.

(g) See *ante*, p. 589, note (b).

on the HUSBAND'S LIFE effected in the names of the TRUSTEES, the WIFE taking the FIRST LIFE INTEREST. The HUSBAND'S FATHER covenants to pay an ANNUITY and the WIFE'S FATHER covenants to make up her REVERSIONARY SHARE to a given sum. VARIATIONS, where the WIFE'S interest in the MORTGAGE is EQUITABLE only, where a FIXED SUM raisable out of the REVERSION is settled, and where the HUSBAND is NOT DOMICILED in ENGLAND (a).

PARTIES, A. of, &c. (hrinar called the husbd) (b), 1; B. of, &c. Parties. (hrinar called the wife), 2; C. of, &c. (the husband's father), 3;

(a) In the absence of a settlement, the rights and obligations imposed by marriage on a husband and wife are those of the place in which the newly-married couple intend to establish their home: see *Colliss v. Hector*, L. R. 19 Eq. 334; Story, Conflict of Laws, ss. 191 to 199; Westlake, 5th ed., pp. 77 *et seq.*: see also the authorities collected, Sirey, Les Codes Annotés, note to Code Napoléon, Art. 1387. Where these rights are present proprietary rights over movables, *De Nicols v. Curlier*, [1900] A. C. 21 (see 16 L. Q. R. 277), or immovables, *Re De Nicols*, [1900] 2 Ch. 410, as distinguished from rights which will arise on the death of one of the spouses, *Lashley v. Hog*, 4 Paton, 581, they are not affected by change of domicile. As to the meaning of "domicile," and how it is changed, see Dicey, Conflict of Laws, 4th ed., pp. 92 *et seq.*; Goodeve, P. P., 5th ed., pp. 415 *et seq.*; *Re Annesley*, [1926] Ch. 692 not following; *Re Johnson*, [1903] 1 Ch. 821 (discussed 25 L. Q. R. 145). The marriage settlement must be interpreted according to the law of the place where it is contracted (Dicey, Conflict of Laws, pp. 712 *et seq.*), or, rather, it is submitted, according to the law with reference to which it is evidently framed: see *Este v. Smyth*, 18 Beav. 112; *Chamberlain v. Napier*, 15 Ch. D. 614; *Re Hernando*, 27 Ch. D. 284; *Re Barnard*, 56 L. T. 9; *Re Bankes*, [1902] 2 Ch. 333; *Re Fitzgerald*, [1904] 1 Ch. 573; *Re Mackenzie*, [1911] 1 Ch. 578; *Re Hewitt's Settlement*, [1915] 1 Ch. 228. Questions as to the conflict of laws are apt to arise where the intended husband is Scottish, see *Re Craignish*, [1892] 3 Ch. 180, which shows the desirability of excluding (if so intended) the Scots law by an ante-nuptial contract. As to the personal capacity of the parties, see *Cooper v. Cooper*, 13 App. Cas. 88 (a Scots case). A difficulty occurs where the provisions of a marriage settlement, though lawful according to the law according to which it has to be interpreted, are unlawful in the place of the matrimonial domicile. For example, the usual clauses as to children in an English settlement would be illegal according to French law, Code Napoléon, 1389. It appears from *Van Grutten v. Digby*, 31 Beav. 561; *Re Mégret*, [1901] 1 Ch. 547; and *Re Bankes, sup.*, that if a marriage is contracted between an English woman and a foreigner with the intention that the matrimonial domicile shall be foreign on the faith of a settlement in English form, entered into previously to the marriage, relating to property

Matri-
monial
domicile.

Operation
of settle-
ment on
marriage
between
persons of
different
domiciles.

(b) Where the husband is not domiciled in England say "domiciled in ———."

Recitals. D. of, &c. (*the wife's father*), 4; E., F. & G. (*hrinar called the trees*), 5. *Recite intended marre*, p. 501, f. 1; *title of wife to "one equal — pt or share of the trust ppty" under her parents' settlemt & an appointmt subject to her parents' life interests*, p. 503, f. 9; *particulars of trust property*, p. 504, f. 12; *title to mtge & transfer to trees (c)*, p. 507, f. 19; *agrmt for settlemt of wife's reversionary interest (d)*, p. 505, f. 14; *title to & agrmt for settlemt of poly*, p. 507, f. 18; *agrmt*

subject to the law and within the jurisdiction of England, the English Courts will determine the rights of all persons claiming under it, as if the whole matter were to be regulated by English law. It will be safer to appoint as trustees persons domiciled in England, and to prohibit investments in the place where the husband is domiciled, in those cases at least where, according to the law of that place the settlement would be invalid, so as to render it improbable that any question as to the settlement could be brought before the Courts of that place. The Public Trustee cannot accept the trusteeship of a foreign settlement. *Re Hewitt's Settlement*, [1915] 1 Ch. 228. Where the settlement does not bind the wife because she is an infant: *Cooper v. Cooper*, 13 App. Cas. 88; and according to the law of her matrimonial domicile, the husband and wife have a power which cannot be waived, and which they exercise to revoke the settlement, the wife is not bound by the settlement: *Viditz v. O'Hagan*, [1900] 2 Ch. 87. It is understood that an order under the Infant Settlements Act, 1855, authorising an English minor to execute a French *contrat de mariage* will be recognised in France. A marriage solemnised in and valid according to the law of England may where one of the parties is a foreigner be invalid in his or her country owing to the law of that country; see Code Napoléon, 174. It is always prudent where one of the parties is a foreigner, to ascertain that the law of his or her country contains no such provisions. See, generally, Vaizey on Settlements, 1640

Variation by foreign Court after foreign divorce. As to the power of a Scottish Court to vary an English settlement after a dissolution of the marriage by decree of the Court of Session, see *Montgomery v. Zarifi*, [1918] S. C. (H. L.) 128.

(c) If the wife has only an equitable interest in the mortgage, say "AND WHAS the wife is under or by virtue of, &c., beneficially entitled to a ppal sum of £—— & intt secured by a mtge of certain freehd ppty belongg to ——, situate, &c., wch ppal sum of £—— & intt (togr with the secs for the same) is now legally vested in X & Y."

Variation for fixed sum. (d) If a fixed sum, raisable out of the reversion, is settled, substitute for the above a recital of agreement for settlement of "the sum of £——, to be raised out of the sd one equal undivided —— share," &c., as in the text, "when the same shl fall into posson."

If the wife has only an equitable interest in the mortgage, insert "and also the sd ppal sum of £—— to wch the wife is entitled as afsd & the intt thron."

by C. to pay annuity, p. 508, f. 21; AND WHAS it has been further agrd that the sd D. shl enter into the covt hrinar contained for making up the amt of the sd reversionary share or intt of the wife to the sum of £——; *Agreement to settle wife's after-acquired property*, p. 508, f. 22; *general agrmt*, p. 508, f. 23. NOW THIS DEED made in psuance of the sd agrmt & in conson of the intended marre WITNESSETH as follows:—

Agreement as to making up value of reversionary interest. Witnesseth.

1. *Assignmt by wife of her reversionary share under her parents' settlement and the appointmt (a)*, p. 508, f. 1, & p. 509, note.

2. *Trust for investment of "the share and intt (b) (c) hrinbfe assigned and also of the sd mtge debt of £—— transferred to them by the recited transfer of even date herewith" & power to vary*, p. 512, f. 2.

Trust for investment and power to vary.

3. THE TREES shl pay the income of the sd share & intt & the sd mtge debt & the ppty for the time being representing the same (hrinafter called the wife's fortune), & any intt now accrued but not yet reced on the sd mtge debt, *continue trusts of wife's fortune*, p. 514, f. 2.

4. *Power of apptmt on death of survivor*, p. 522, f. 14, and *trust in default of apptmt*, p. 524, f. 15.

5. *Hotchpot clause*, p. 525, f. 17.

6. *Ultimate trusts*, p. 531, f. 26.

7. *Investment clause*, pp. 537 *et seq.*

(a) Where the settlement is of a fixed sum raisable out of the reversion the assignment will be of "ALL that the sum of £——, to be raised out of the sd pt or share, &c., as soon as may be after the same pt or share & premes shl fall into posson, & to be pd to the trees witth any deduction in respt of succession [legacy] or other duty, expses, or orwise, with intt thron, at the rate of £—— p.c. p.a., from the day when the sd pt or share & premes fall into posson until the sd sum of £—— shl be raised & pd.

Variation for fixed sum.

If the wife has only an equitable interest in the mortgage, add parcels for the mortgage debt, *ante*, p. 511, note.

(b) If the wife has only an equitable interest in the mortgage, the trust for investment will be of "the share and intt mtge debt & premes hrinbfe assigned."

(c) If a fixed sum raisable out of the reversion is settled say "the sd sum of £——."

8. *Trusts of husband's life policy by reference to trusts of wife's fortune*, p. 552, f. 1.

9. *Covenant to keep up poly (d)*, p. 552, f. 2.

10. *Covenant by husband's father to pay annuity to trustees*, p. 556, f. 9, (i.)-(iii.).

11. *Declaration of trust of annuity (e)*, p. 561, f. 13.

12. *Covenant by wife's father to make up her reversionary interest to a given sum, & declaration of trust*, p. 558, f. 10, (i.) & (ii.).

13. *Agmt to settle wife's after-acquired property (f)*, p. 563, f. 19, (i.)-(iii.).

14. *Power to apportion payments*, p. 579, f. 3.

15. *Power for professional trustee to charge*, p. 580, f. 6.

16. *Trustees' indemnity*, p. 581, f. 7.

[17. *Nomination of trust corporation to receive notices*, p. 586, f. 7.]

18. *Power to appoint new trustees*, p. 583, f. 2.

19. *Interpretation (g) of "trees,"* p. 586, f. 8.

IN WITNESS, &c. (h).

(d) Add any of the other policy clauses on pp. 554 *et seq.* which may be appropriate.

(e) If so intended add, "but so that if the wife sh^l marry again after the death of the husbd the same annual sum sh^l be pd & applied to the psons, for the pposes, & in the mner to, for & in wch the same would be payable or applicable if the wife were then dead."

(f) If only a fixed sum to be raised out of the wife's reversionary interest is settled, say, "& except also such pt of the sd share & intt to wch the wife is entitled in the ppty subj^t to the trusts of the sd settlem^t of 18— as sh^l remain after the sd sum of £— sh^l have been raised, togr with the costs of raising the same."

(g) Where the husband is not domiciled in England, insert the declaration as to domicile, *ante*, p. 585, f. 5.

(h) Notice of the settlement must be given to the trustees of the marriage settlement of the wife's parents, to the insurance office, and if the wife's interest in the mortgage is equitable only, to the persons in whom it is legally vested.

V.

TRANSFER of MORTGAGE of FREEHOLDS or LEASEHOLDS
to TRUSTEES of MARRIAGE SETTLEMENT of even
date (a).

PARTIES, A., wife, 1; B., husbd, 2; C., D. & E., trees Parties.
(hrinar called the trees), 3. *Recite mtge to wife*, p. 9, f. 10; Recitals.
state of mtge debt, p. 12, f. 11, or p. 12, f. 12; *intended marre*,
p. 501, f. 1; *agrmt for transfer to trees*, p. 507, f. 20. NOW Wit-
THIS DEED made in psuance of the sd agrmt & in conson of nesseth.
the intended marre WITNESSETH as follows :—

1. *Assnmt (b) by A.* “with the approbation of the sd B.”
of mtge debt & secs, p. 508, f. 1, & p. 511, *note with variation in*
note (a) on p. 511.

2. *Power to appoint new trustees*, p. 583, f. 2.

IN WITNESS, &c.

(a) The transfer is made by a separate deed, in order that the settlement may not become part of the title to the mortgaged estate; and with the same object of keeping the settlement off the title to the land, upon new trustees being appointed, separate appointments are made for the settlement and the transfer or conveyance of even date. The disclosure of the existence of the trust is immaterial, as persons dealing in good faith with mortgagees which expression includes transferees: L. P. Act, 1925, s. 205 (1) (xvi.): are not concerned with any trusts affecting the mortgage money: L. P. Act, 1925, s. 113, and see *ante*, p. 243. If the settlor has only an equitable interest in a mortgage vested in trustees, a separate deed is unnecessary; see Prec. IV. As to the stamp on this deed, see the Stamp Act, 1891, s. 106, Schedule, tit. “MORTGAGE, TRANSFER.” As to the form of transfer if the land is registered under the L. R. Act, see L. R. R. 153.

As to
settle-
ment of
mortgage
debt.

(b) If there is any doubt as to the possibility of immediately giving notice of the assignment a power of attorney should be inserted here, see *ante*, p. 69, f. 1. As to the omission of the power, see *ante*, p. 69, note.

VI.

SETTLEMENT on MARRIAGE, where WIFE is an INFANT (*d*),
 of CONSOLS in COURT to which the HUSBAND is
 CONTINGENTLY entitled in REVERSION, and of share in
 SETTLED FUNDS belonging to the WIFE. The
 HUSBAND takes a PROTECTED LIFE INTEREST in the
 WIFE'S FORTUNE on her death, and his LIFE INTEREST
 in his own FORTUNE IS CHARGED with MAINTENANCE.
 COVENANT by HUSBAND for payment of an ANNUITY
 to his WIDOW to be charged on the PROFITS of his
 BUSINESS. POWER to TRUSTEES to purchase LAND
 or a HOUSE, and to obtain a STOP ORDER. POWER to
 either SPOUSE to make a SETTLEMENT on a FUTURE
 MARRIAGE.

Parties. *PARTIES*, as in *Prec. I.*, p. 587, describing the wife as "an
 Recitals. infant." *Recite intended marre*, p. 501, f. 1. AND WHAS the
 Title to husband, as one of the chln now living of K. deced by his
 fund in wife L., will in the event of his surviving the sd L. become
 Court. entitled under the will of the sd K., weh was proved, &c., to
 one equal *sixth* share or to some other share or to the whole

As to settle-
 ments
 of the
 wife's
 property
 where she
 is an
 infant.

(*d*) Prior to the M. W. P. Act, 1882, where the intended wife was an infant, a settlement of her property, with the concurrence of the intended husband, though not binding on her, was binding on him, and effectual as to any interest which he would have taken maritally in the absence of a settlement (see 3 Dav. *Prec.*, 3rd ed., 647); but beyond this it could only be made effectual by the wife being put to her election, where property was also settled by the husband or some other person, so as to preclude her from taking any benefit from such property except on the terms of confirming the settlement of her own property; or else obtaining the sanction of the Court to the settlement under the Infant Settlements Act, 1855 (see *Prec. IX.*, *infra*). See *post*, p. 605, note.

Effect of
 M. W. P.
 Acts, 1882
 and 1907.

The rule was not altered by the M. W. P. Act, 1882; see s. 19, *ante*, p. 514, note (*e*). It has nevertheless been the practice where the settlement was not made under the Infant Settlements Act, to insert either a covenant by the husband that the wife should make or confirm the settlement when of age, with a provision protecting the trustees from responsibility for not taking proceedings under the covenant, or, if property were also settled by the husband or any other person, a clause expressly putting the wife to her election. The effect of s. 2 of the M. W. P. Act of 1907 is to render such a covenant or a disposition by the husband ineffectual for the purpose of binding any property belonging to the infant wife, unless upon attaining full age she confirms the settlement. It will, however, bind any property

of a sum of £—— 2½ p.c. Consolidated Stk now standg in Court to the credit of an action entitled X. v. Y., *add reference to record*, the acct, &c. AND WHAS the husbd is carrying on business in coptnp with —— under the firm name of ——; *wife's title to reversionary share*, p. 503, f. 9; *parlars of trust ppty*, p. 504, f. 12; *agrmt to assn ppty belongg to each spouse*, p. 515, f. 15; *agrmt by husbd to pay annuity*, p. 508, f. 21; *agrmt to settle wife's after-acquired ppty*, p. 508, f. 22; *general agrmt*, p. 508, f. 23. NOW THIS DEED made in psuance of the sd agrmt & in conson of the intended marre WITNESSETH as follows :—

Partner-
ship.

Wit-
nesseth.

coming to the husband as administrator on his wife's death under age. The Act does not affect the clause putting the wife to her election, neither does it affect any settlement made under the Infant Settlements Act, 1855.

A settlement, however, by an infant, if it is for his or her benefit (which a settlement of the wife's existing or future property on marriage of the ordinary type would be considered to be: *Smith v. Lucas*, 18 Ch. D. 531) is voidable only and not void, so that the infant on coming of age can confirm it: *Re Hodson*, [1894] 2 Ch. 421, and if nothing is done by the infant after attaining majority amounting to a repudiation, it will stand: *Smith v. Lucas*, *sup.*; *Burnaby v. Equitable, &c., Society*, 28 Ch. D. 416; *Duncan v. Dixon*, 44 Ch. D. 211; and the right of repudiation is of course personal to the infant, and it must be exercised within a reasonable time after attaining majority; *Edwards v. Carter*, [1893] A. C. 360; *Carnell v. Harrison*, [1916] 1 Ch. 328. But the rule does not apply if by the law of the matrimonial domicile the settlement is revocable, and the right to revoke cannot be waived, *Viditz v. O'Hagan*, [1900] 2 Ch. 87. As to what amounts to such an adoption or confirmation on the part of the infant as to bar the right of repudiation (which is often a difficult question), see *Davies v. Davies*, L. R. 9 Eq. 468; *Milner v. Lord Harewood*, 18 Ves. at p. 277; *White v. Cox*, 2 Ch. D. 387. As to acts amounting to election, see *Wilder v. Piggott*, 22 Ch. D. 263; *Greenhill v. North British, &c.*, [1893] 3 Ch. 474; *Smith v. Lucas*, *sup.*, where the confirmation by the wife of the settlement *quoad* certain interests settled or agreed to be settled by her was held not to prevent her from repudiating it as to property subsequently accruing. As to election generally see *Harle v. Jarman*, [1895] 2 Ch. 419. On the principle of election the wife cannot, on coming of age, repudiate without making compensation to the parties who are thereby disappointed, out of any interests taken by her in any other property bound by the settlement: *Codrington v. Codrington*, L. R. 7 H. L. 854; but, after some conflict of authority, it appears to be now settled that compensation cannot be awarded out of any interest as to which the wife is by the settlement restrained from anticipation: *Re Vardon*, 31 Ch. D. 275; *Hamilton v. Hamilton*, [1892] 1 Ch. 396; discussed, *Haynes v. Foster*, [1901] 1 Ch. 361. The principle of election may apply although the settlement is void and not merely voidable, see *Codrington v. Codrington*, *sup.*

Effect of
settle-
ments by
infants.

See further, as to settlements on the marriage of infants, 3 Dav. Prec., 3rd ed., 647 *et seq.*, Vaizey, Ch. 2; Simpson on Infants, 4th ed., p. 26 *et seq.*

1. *Assignmt by husbd*, p. 508, f. 1 of, "ALL the one equal sixth share or other the share or the whole, as the case may be, to wch the husbd will become entitled if he shd survive the sd L., of the sd sum of £—— 2½ p.c. Consolidated Stk."

2. THE WIFE (a) with the approbation of the husbd hby assns, & the husbd as settlor with the approbation of the wife hby assns (b), *continue assignmt of reversionary interest* (c), p. 508, f. 1, & p. 509, note.

3. *Trust for investmt of "the sd shares & interests hrinbfe assigned"* & *power to vary*, p. 512, f. 2.

4. *Trusts of "the sd premes first hrinbfe assigned"* (husbd's fortune), p. 514, f. 1.

5. *Provision charging husbd's life interest in his own fortune with maintenance* (d), p. 521, f. 13.

6. *Trusts of "the sd premes secondly hrinbfe assigned"* (wife's fortune), p. 514, f. 2, *omitting life interest to husband*.

7. *Determinable life interest to husbd*, p. 519, f. 9 (i.) & (ii.).

8. *Provision as to cesser of forfeiture*, p. 520, f. 10, (i.)-(iii.).

9. *Provision as to exercise of husbd's powers after forfeiture*, p. 530, f. 24.

10. *Power of apptmt on death of survivor*, p. 522, f. 14, & *trust in default of apptmt*, p. 524, f. 15.

11. *Hotchpot clause*, p. 525, f. 17.

12. *Ultimate trusts*, p. 531, f. 26.

13. *Investment clause*, pp. 537 et seq.

14. *Power to purchase land*, p. 543, f. 9, (i.) & (ii.), or, *power to invest a fixed sum in purchasing a residence*, p. 544, f. 11, (i.)-(iii.).

15. *Power to take purchased leaseholds in name of beneficiary*, p. 546, f. 13, (i.)-(iii.).

(a) The wife should not assign "as settlor."

(b) This operates as a disposition by the husband of the interest to which he may become entitled on the wife's death: see *ante*, p. 598, note.

(c) If the wife takes no interest in her reversionary share until marriage, omit the trust for her until the marriage.

(d) An alternative method of providing for the maintenance of the family out of the husband's fortune would be to give him a determinable life interest in his own fortune, as at p. 517, f. 8, with provisions as to cesser, &c., of, and exercise of powers after, forfeiture. In the above Precedent some of these clauses would require modification so as to make them apply to both fortunes.

16, &c. *Add such of forms 1, 2, pp. 550, 551, giving special powers in connection with leaseholds, as may be required.*

17. (i.) THE HUSBAND hereby covenants with the trees that if the intended marriage shall be solemnised his repves will, so long as the wife if surviving shall be living, pay to the trees during her widowhood an annuity of £—— (e), & if the wife shall marry again, then during the then residue of her life an annuity of £——. Covenantant to pay annuity.

(ii.) THE TREES shall stand possessed of the annuity for the time being payable under the covenant by the husband hereinbefore continued, Upon trust to pay the same to the wife during her life.

(iii.) *Indemnity to trustees*, p. 557, f. 9, (ii.).

(iv.) *Charge on profits of business of the annuity* "hereinbefore covenanted to be paid," p. 561, f. 14.

18. Agreement to settle wife's after-acquired property, p. 563, f. 19, (i.)-(iii.).

19. Power to survivor to make a settlement on a future marriage, p. 570, f. 1, (i.)-(iv.), (v.) or (vi.), (vii.) & (viii.).

20. THE HUSBAND hereby authorises the trees as his attys & at his cost to apply for & obtain an order in the said action that the share or shares to which he may become entitled in the said sum of £—— 2½ p.c. Consolidated stock shall not be transferred or disposed of without notice to the trees, & on such application to use his name as consenting thereto & to instruct solrs & counsel on his behalf. Power to obtain stop order.

21. Power to apportion payments, p. 579, f. 3.

22. Provision as to recouping moneys paid out of one fortune for the benefit of the other, p. 580, f. 4.

23. Power for professional trustee to charge, p. 580, f. 6.

24. Trustees' indemnity, p. 581, f. 7, (i.), (iv.).

25. Power to appoint new trustees, p. 583, f. 2.

26. Wife's powers during minority, p. 531, f. 25, (i.)-(iii.).

27. Clause putting infant wife to election to confirm settlement, p. 576, f. 5.

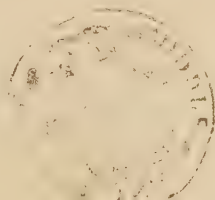
[28. Nomination of trust corporation to receive notices, p. 586, f. 7.]

29. Interpretation of "trees," p. 586, f. 8.

IN WITNESS, &c.

Schedules.

(e) For a form providing that the annuity shall not be diminished by deduction of income tax, see *ante*, p. 561, note.



VII.

DEED of CONFIRMATION (a) of SETTLEMENT and
ASSURANCE of EQUITABLE INTERESTS and SHARES
in PROCEEDS of SALE of LAND (b) by a WIFE on
attaining TWENTY-ONE.

Recitals. *PARTIES* (c), as in *Prec. I.*, p. 587. WHAS this deed is suppl to a settlmt (hrinar called the settlmt) dated, &c., & made betn, &c., [the same pties as are pties hto] being the settlmt made in conson of the marre then intended & shortly afterwards solemnised betn the husbd & the wife. AND WHAS the wife attained the age of twenty-one yrs on the — day of — & has agrd at the request of the trees to confirm the settlmt in mner hrinar appearing. NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows:—

Wit-
nesseth.

Confirma-
tion of 1. THE WIFE with the approbation of the husbd hby confirms the settlmt to the intent that the same shl take effect in

Infants'
Relief
Act,
1874. (a) A settlement or agreement for settlement by an infant is not affected by s. 1 of the Infants' Relief Act, 1874, avoiding certain contracts made by infants: *Duncan v. Dixon*, 44 Ch. D. 211; and s. 2 of the Act, which provides that no action shall be brought upon any ratification made (with or without consideration) after full age of a contract made during infancy, does not apply to a contract which is for the benefit of the infant (e.g. a marriage settlement), since such a contract, being voidable only, does not need ratification, and the confirmation of the settlement merely bars the right of repudiation: *Duncan v. Dixon*, *sup.*; *Edwards v. Carter*, [1893] A. C. 360; *Re Hodson*, [1894] 2 Ch. 421. See as to settlements by infants, *ante*, p. 598, note (d).

Stamp. If the settlement was stamped with an *ad valorem* stamp, the deed of confirmation, whether for valuable consideration or not, requires only a 10s. stamp, as it is one of several instruments effecting the settlement of the same property; see Stamp Act, 1891, s. 106. It is conceived that the deed is not a voluntary disposition within the Fin. (1909-10) Act, 1910, s. 74, so as to render it liable to the stamp duty imposed by that section.

Notice. Notice must be given to the trustees of any prior settlement or will under which the wife takes an equitable interest comprised in the settlement.

(b) See form of parcels, *ante*, p. 611, note. No formal assignment of equitable interests or interests in proceeds of sale of land held upon the statutory trusts or otherwise on trust for sale is necessary, the mere confirmation by the wife being all that is required. Equitable interests in settled land can be held by and transferred to an infant, and the powers conferred by the Infant Settlements Act, 1855, are not affected by the new legislation: S. L. Act, 1925, s. 27.

(c) The wife will be the party of the first part.

the same mner in all respects as if the wife had at the date throf been of full age. settle-
ment.

2. THE TREES shl stand possessed of all the premes expressed to be assned by the wife & all moys stks funds shares & ppty whatsoever by the settlmt expressed or intended to be settled by or on the pt of the wife Upon with & subjt to such trusts powers & provons as are by the settlmt declared concerning the same resply to take effect after the solemnison of the sd marre so far as the same are now subsisting & capable of taking effect. Declara-
tion of
trust (a).

3. IN EXERCISE of the power in this behalf conferred on them by the settlmt the trees hby declare that the execution of this deed by the wife is a sufficient & effectual compliance with the condon contained in the settlmt that she shd confirm the same on attaining the age of twenty-one yrs. Declara-
tion by
trustees
of suffi-
ciency of
confirma-
tion (b).

IN WITNESS, &c.

VIII.

CONVEYANCE of a LEGAL ESTATE (c) in LAND by TRUSTEES at the direction of a WIFE who has attained FULL AGE to the TRUSTEES of her MARRIAGE SETTLEMENT.

PARTIES, L. & M., trees of settlmt deemed to subsist durg the wife's infancy, 1 ; A., wife, 2 ; B., husband, 3 ; X. & Y., trees

(a) This declaration is really unnecessary, but some practitioners include it.

(b) This provision will only be inserted where the settlement contains a clause putting the wife to her election to confirm the settlement on attaining full age.

(c) An infant is incapable of holding a legal estate in land : L. P. Act, 1925, s. 1 (6). Any legal estate vested in an infant under the old law and any legal estate which would but for the provisions of the L. P. Act, 1925, vest in an infant at any time after 1925 has been converted into and becomes settled land : Part III. of the First Schedule, L. P. Act, 1925 ; S. L. Act, 1925, s. 1 (1), and Sched. II. Infants
and legal
estates.

A legal estate vested in an infant under the old law is now vested in the trustees of the settlement upon the trusts requisite for giving effect to the rights of the infant and other persons interested, or, if there are no trustees, in the Public Trustee until trustees in his place have been appointed : S. L. Act, 1925, Sched. II., para. 3. Where the infant's interest arises under an instrument that instrument is the settlement, but if the interest arises on an intestacy or otherwise and there is no instrument a settle-

of *marre settlemt*, 4. *Recite assurance before 1926* of "the ppty mentd in the schedule hrto" to A.: AND WHAS the sd A. was born on the — day of —: AND WHAS under or by virtue of the staty provons in that behalf the sd ppty became vested in the Public Tree upon the trusts requisite for givg effect to the rights of the sd A. durg her infancy: AND WHAS by an appointmt dated, &c., & made between H. and K., the parents of the sd A. of the one pt, & the sd L. & M. of the other pt, the sd L. & M. were appointed by the sd H. & K. to be trees of the settlemt deemed to be subsistg in the sd ppty in place of the Public Tree: AND WHAS by a settlemt dated, &c., & made, &c., upon the marre of the sd A. to the sd B. the sd A. with the approbon of the sd B. assigned all her intt in the sd ppty to the sd X. & Y. upon the trusts & with & subjt to the powers declared & contd in the sd last-mentd settlemt: AND WHAS by a deed dated, &c., & made, &c., the sd A. confirmed the sd last-mentd settlemt: AND WHAS the sd A. has requested the sd L. & M. to transfer the legal este in the sd ppty to the sd X. & Y. in manner hrinar appearg. NOW THIS DEED made in conson of the premes WITNESSETH as follows: THE SD L. & M. as trees & by the diron of the sd A. directg with the approbon of the sd B. & in exercise of the pwr in this behalf conferred on them by s. 16 of the S. L. Act, 1925, & of every other pwr them enabling hrby grant unto the sd X. & Y. ALL & SINGL the ppty mentd in the schdle hrto. *Habendum*, Vol. I., p. 503, f. 13, *mutatis mutandis*.

IN WITNESS.

Schdle.

ment is deemed to have been made by the intestate or other person whose interest the infant has acquired: S. L. Act, 1925, s. 1 (2).

A conveyance after 1925 of a legal estate to an infant alone or jointly with other infants operates as an agreement for valuable consideration to execute a settlement in favour of the infant or infants and in the meantime to hold the land for his or their benefit: L. P. Act, 1925, s. 19 (1); S. L. Act, 1925, s. 27. A conveyance of a legal estate to an infant jointly with another person or persons of full age operates to vest the legal estate in the person or persons of full age upon the statutory trusts: L. P. Act, 1925, s. 19 (2). Where the infant's interest is held upon the statutory trusts an assurance as in Prec. VII., *ante*, p. 602, is all that is necessary until a partition is effected.

Upon attaining full age an infant beneficially entitled can call for a conveyance of the legal estate in the settled land to himself or as he may direct: S. L. Act, 1925, s. 16. The Court has power to make the necessary vesting order if the estate owner refuses or neglects to convey the legal estate or if for any reason the Court is satisfied that the transaction cannot otherwise be effected or cannot be effected without undue delay or expense.

Right to
call for
convey-
ance.

IX.

SETTLEMENT *on MARRIAGE under the INFANT SETTLEMENTS ACT, 1855 (a), of the WIFE'S REVERSIONARY INTEREST in PERSONALTY and in PORTIONS charged on REAL ESTATE, the ELDEST SON of the MARRIAGE being postponed to the YOUNGER CHILDREN. COVENANT by WIFE'S FATHER to pay ANNUITY. VARIATIONS where the INFANT is a WARD of COURT.*

PARTIES, A. of, &c. (hrinar called the husbd), 1; B. (hrinar called the wife), *describing her as* "an infant of the age of — yrs & a daur of C. of, &c.," 2; the sd C., 3; D., E. & F. (hrinar called the trees), 4. *Recite intended marre*, p. 501, f. 1; *wife's title to reversionary share under her parents' settlement & apptmt*, p. 503, f. 9; *title to portion charged on real este*, p. 504, f. 11, &c.; *parlars of trust property*, p. 504, f. 12; *agrmt for settlemt of reversionary intt*, p. 505, f. 14; *agrmt by C. to pay*

Parties.

Recitals.

(a) The Infant Settlements Act, 1855 (the powers conferred by which are unaffected by the S. L. Act, 1925, see *ante*, p. 602, note (b)), enables an infant male who has attained twenty or an infant female who has attained seventeen to make a valid marriage settlement with the approval of the Court. The settlement may be made after the marriage: *Re Sampson & Wall*, 25 Ch. D. 482; *Re Phillips*, 34 Ch. D. 467; *Re Leigh*, 40 Ch. D. 290; *Re A. B.*, [1914] W. N. 140; but the Court cannot compel the infant to execute: *Re Leigh*, *sup.* The Act enables an infant donee to make an absolute appointment so that on failure of the provisions of the settlement the property becomes his own: *Re Scott*, [1891] 1 Ch. 298. Generally as to the Act, see Daniell's Chancery Practice, 8th ed., 996; Seton, 7th ed., 1015.

Infant Settlements Act, 1855.

An order may be made that the costs of a female ward of Court shall be paid out of settled funds: see *De Stacpoole v. De Stacpoole*, 37 Ch. D. 139.

Costs.

The M. W. P. Act, 1907, s. 2 (3), provides that nothing in that section (as to which see *ante*, p. 598) shall render invalid a settlement or agreement for a settlement made under the Infant Settlements Act, 1855.

M. W. P. Act, 1907.

It is conceived that the provisions in the Precedent in the text will, as a rule, be sanctioned by the Court. For a settlement on the marriage of an infant made without recourse to the Act, see Prec. VI. and note thereto, *ante*, p. 598.

Agree-
ment for
settle-
ment by
husband.

Order of
Court.

Approval
of judge.

Wit-
nesseth.

annuity, p. 508, f. **21**; *agmt to settle wife's after-acquired property*, p. 508, f. **22**; *general agmt*, p. 508, f. **23**. [AND WHAS (b) upon the treaty for the intended marre it was agrd that further provon shd be made for the wife by a settlemt of [the real estes of the husbd situate at —, *or as the case may be*], wch settlemt has been effected by another settlemt (hrinar called the husband's settlemt) bearing even date herewith & made betn, &c.] AND WHAS by an Order of the Chancery Division of the High Court of Justice made on the — day of — by Mr. Justice — in the matter of B., an infant, by X. her guardian, *or*, “next friend,” & in the matter of the Infant Settlements Act, 1855, whereby, after premising that the Judge was of opinion that [the intended marre was a fit & pper marre & that] the settlemt proposed to be effected by this deed [& by the husbd's settlemt] was a pper settlemt to be made upon or in contemplon of the marre of the wife with the husbd of the ppty of the wife [& of the husbd] comprised thrin & that the settlemt thrin referred to (being this deed [& the husbd's settlemt]) was a [were] pper instrumt [instrumts] for giving effect to such settlemt the Judge did pursuant to the sd Act of Parliamt sanction & approve of the same & did order that the wife be at liberty in contemplon of her marre with the husbd to execute the same accordingly [and that upon the due execution of this deed [& the husbd's settlemt] by the husbd & wife they shd be at liberty to intermarry]. AND WHAS this deed has been approved by the Judge as appears by the signature of one of the Masters attached to his chambers in the margin hrof: NOW THIS DEED made, &c., *continue as at* p. 508; *adding* “& with the sanction of the Chancery Division of the High Court of Justice,” WITNESSETH as follows:—

1. *Assignment by wife of her reversionary interest*, p. 508, f. **1**, & p. 509, note, omitting the words “as settlor.”

2. *Similar assignment by wife of her portion*, saying “ALL THAT the sum of £—— or other the sum or sums to wch she is [will upon the solemnson of the intended marre become] entitled as afsd & all intt to become payable in respect throf To HOLD,” &c., *as in* f. **1**, p. 508.

(b) This recital and the matter in subsequent brackets will only be inserted if the infant is a ward of Court.

3. *Trust for investmt of "the sd premes hrinbefe assigned"* & power to vary, p. 512, f. 2.

4. *Trusts of "the sd respve trust premes" (wife's fortune)*, p. 514, f. 2.

5. After the death of the survor of the husbd & wife the trees shall stand possessed of the capital & future income of the wife's fortune In trust, etc., *continue trusts for children excluding son taking* "the first intt in tail male under the limitons of the sd settlmt of even date herewith," p. 524, f. 16.

6. *Hotchpot clause*, p. 525, f. 17.

7. *Ultimate trusts*, p. 531, f. 26.

8. *Investment clause (c)*, p. 537, f. 2.

9. *Covenant by C. to pay annuity*, p. 560, f. 12, (i.)-(iii.).

10. *Declaration of trust of annuity*, p. 561, f. 13.

11. *Declaration that annuity or legacy is not to be in satisfaction of portions*, p. 562, f. 17, saying at the end "limited by the sd settlmt of, etc., secondly hrinbfe recited."

12. *Agmt to settle wife's after-acquired property (d)*, p. 563, f. 19, (i.)-(iii.), adding immediately before the proviso to sub-clause (i.) "with the exception that the powers of apptmt hrinbfe given to the husband & wife & the survor of them, in favour of the yor chln of the intended marre shl be extended so that an eldest or only son for the time being entitled to the first intt in tail male, under the limitons of the sd settlemt of even date herewith, may be an object of the sd powers in the same manner as if he had been a yor child."

13. *Power to wife to make a settlemt on a future marriage*, p. 570, f. 1, (i.)-(iv.), (v.) or (vi.), (vii.), & (viii.), with variation in note (c).

14. *Power to apportion paymts*, p. 579, f. 3, with variation in note (f).

15. *Power to appoint new trustees*, p. 583, f. 2.

16. *Wife's powers during minority*, p. 531, f. 25, (i.)-(iii.).

[17. *Nomination of trust corporation to receive notices*, p. 586, f. 7.]

(c) The power of investment will be settled in chambers, but such a form as is referred to in the text is often used.

(d) This clause is authorised by the Act of 1855; see *Re Johnson*, [1891] 3 Ch. 48.

18. *Interpretation of "trees,"* p. 586, f. 8.

IN WITNESS, &c. (a).

X.

ASSIGNMENT (aa) of WIFE'S PORTION charged on REAL ESTATE to TRUSTEES of MARRIAGE SETTLEMENT of even date. VARIATIONS where WIFE is an INFANT.

Parties. *PARTIES*, A., wife, 1; B., husbd, 2; C., D. & E., trees
 Recitals. (hrinar called the trees), 3 (b). *Recite intended marre*, p. 501, f. 1.
 Title to portion. And whas under or by virtue of a settlemt, dated, &c., & made, &c. (being a settlemt of the estes of K., situate in the coy of —, exted in conson of, & shortly bfe the marre of K. & L., the parents of the sd A.) & by virtue of the trusts declared by the same settlemt for raisg portions for the daurs & yor sons of the sd K. & L., out of the sd estes, [& by virtue of a deed poll of apptmt under the hand & seal of the sd K., dated, &c., in psuance of a power contd in the sd settlemt] the sd A. is [will if the intd marre shl take place within six calr months from the date of the sd deed poll of apptmt become] absolly entled to the sum of £—— to be raisable out of the sd estes, & payable to her on the death of the sd K., with intt thron from his death at the rate of 4 p.c. p.a. until paymt, or in his lifetime with his consent. AND WHAS upon the treaty for the intended marre

Agree-
ment. —————

(a) The endorsement on the first skin of the engrossment will be as follows :—

In the High Court of Justice, Chancery Division
 [X. v. Y. 19 , &] In the matter of B. an
 infant by C. her guardian [next friend] & In the
 matter of the Infant Settlements Act, 1855.

This Deed has been settled & approved by Mr. Justice ———
 as appears by an Order dated the ——— day of ——— 19—.

L. M. MASTER.

For the form of affidavit verifying the engrossment, see Daniell's Chancery Forms, 6th ed., p. 589.

Notice. Notice of the settlement must be given to the trustees of the reversionary interest and of the portions term. As to the latter, see *Re Hughes*, 2 H. & M. 89.

(aa) It is no longer necessary to have the assignment of the portion and the trusts of it kept distinct. The precedent is retained for use where separate deeds are desired.

(b) The intended husband and wife should be described throughout this deed by their proper names.

it was agrd that the sd sum of £—— shd be assned to the trees upon the trusts hrinar declared concerng the same (c). NOW THIS DEED made, &c., *continue as at p. 508* :—

Wit-
nesseth

1. THE SD A. as settlor (d) with the approbation of the sd B. hby assns unto the trees ALL THAT the sum of £—— or other the sum or sums to wch she is [will upon the solemnison of the intended marre become] entitled under the trusts of the sd settlemt [& deed poll of apptmt]. To HOLD UNTO the trees In trust for the sd A. until the intended marre, & after the solemnison throf Upon such trusts, &c., *as at p. 511, note (c).*

2. *Power to appoint new trustees*, p. 583, f. 2.

IN WITNESS, &c.

XI.

SETTLEMENT on MARRIAGE of PROCEEDS of SALE of
REAL ESTATE belonging to the HUSBAND, and of a SUM
COVENANTED to be paid by the WIFE'S FATHER (e).

PARTIES (f), A., *husbd*, 1; B., *wife*, 2; C., *wife's father*, 3; D., Parties.
E. & F., *trees* (g), 4. *Recite intended marre*, p. 501, f. 1; *convey* Recitals.
in trust for sale, p. 505, f. 16; *agrmt by C. to pay ppal sum*,
p. 508, f. 21; *agrmt to settle wife's after-acquired ppty*,
p. 508, f. 22; *general agrmt*, p. 508, f. 23. NOW THIS
DEED made, *continue as at p. 508*, WITNESSETH as follows :—

Wit-
nesseth.

1. *Covenant by C. to pay gross sum to trees on his death*,

(c) If the wife is an infant, the proceedings in Court will be next recited, as in the last Precedent, *mutatis mutandis*.

(d) If the wife is an infant the words "as settlor" will be omitted, and if the settlement is made under the Infant Settlements Act, 1855, she will convey "with the sanction of the Chancery Division of the High Ct of Justice."

(e) It is assumed that the land has been conveyed in trust for sale by a deed of even date; see next Precedent. For a settlement by way of trust for sale of registered land, see Prec. XIII., *post*, p. 614.

(f) Describe the husband, wife, and trustees as in Prec. I., *ante*, p. 587.

(g) The trustees of the conveyance on trust for sale should be the same persons as the trustees of the settlement of the proceeds of sale. There should be not less than two or more than four trustees holding the land on trust for sale unless a trust corporation is appointed sole trustee: L. P. Act, 1925, s. 27 (2); T. Act, 1925, s. 34 (2).

As to what is a trust corporation, see T. Act, 1925, s. 68 (18); L. P. Act, Trust
1925, s. 205 (1) (xxviii.); L. P. (Amendment) Act, 1926, s. 3; and the corpora-
P. T. (Custodian Trustee) Rules, [1926] W. N. 266, pt. 2. tion.

p. 556, f. 9, (i.)-(iv.), *omitting the words within brackets in sub-clause (iii.), & saying in sub-clause (iv.)* "Upon the trusts & with & subject to the powers & provisions herein declared & contained concerning the same."

2. *Trust for investment of moneys arising from sale of real estate*, " & also of the sd ppal sum of £—— hereinbefore covenanted to be paid as & when received by them " & *power to vary*, p. 513, f. 3.

3. The trustees shall pay the income of the residuary or net moneys to arise from any sale under the sd trust for sale (p) contained in the recited conveyance of even date herewith & the investments for the time being representing the same (hereinafter called the husband's fortune), *continue trusts of husband's fortune*, p. 514, f. 1 (a).

4. The trustees shall pay the income of the sd ppal sum hereinbefore covenanted to be paid, & any moneys paid in satisfaction or in part satisfaction thereof as aforesaid, & the investments for the time being representing the same (hereinafter called the wife's fortune) & any interest payable under the said covenant *continue trusts of wife's fortune*, p. 514, f. 2.

5. *Power of appointment on death of survivor*, p. 522, f. 14, & *trust in default of appointment*, p. 524, f. 15.

6. *Hotchpot clause*, p. 525, f. 17.

7. *Ultimate trusts*, p. 531, f. 26, saying "but if the wife shall not survive the husband then In trust for the sd C. absolutely."

8. *Investment clauses*, pp. 537 et seq. (b).

(p) As to the application of nett rents and profits until sale, see *ante*, p. 548.

(a) As to an order of Court giving possession to the equitable tenant for life under a settlement by way of trust for sale, or authorising him to exercise the S. L. Act powers, see *Re Bagot*, [1894] 1 Ch. 177; *Re Newen*, [1894] 2 Ch. 297; *Re Hunt*, [1901] W. N. 144.

Waste.

As to whether a tenant for life under a settlement of this nature is impeachable for waste, see *Re Ridge*, 31 Ch. D. 504; as to whether the trustees may commit waste, see *Seagram v. Knight*, L. R. 2 Ch. at p. 630; *Waldo v. Waldo*, 12 Sim. 107; and as to whose are the proceeds of waste by the trustees, see *Cowley v. Wellesley*, L. R. 1 Eq. 656; *Re Harrison*, 28 Ch. D. 220. See further as to waste, *post*, p. 656, note.

In the absence of a direction to the contrary in the instrument creating the settlement an equitable tenant for life without impeachment of waste cannot commit equitable waste: L. P. Act, 1925, s. 135.

(b) Proceeds of sale of land held upon trust for sale may be invested in

9. *Power to purchase land*, p. 543, f. 9, (i.) & (ii.).
10. *Power to take purchased leaseholds in name of beneficiary*, p. 546, f. 13, (i.)-(iii.).
11. *Agrmt to settle wife's after-acquired ppty*, p. 563, f. 19. (i.)-(iii.), adding immediately before the proviso to sub-clause (i.), "except that if the wife shl not survive the husbd, then the trees shl stand possessed throf In trust for such pson or psons as wd have become entitled," &c., continue as at p. 532. Agreement to settle after-acquired property.
12. *Power to apportion payment*, p. 579, f. 3.
13. *Power for professional trustee to charge*, p. 580, f. 6.
14. *Power to appoint new trustees*, p. 583, f. 2 (c).
- [15. *Nomination of trust corporation to receive notice*, p. 586, f. 7.]
16. *Interpretation of "trees,"* p. 586, f. 8.
- IN WITNESS, &c.

XII.

CONVEYANCE (d) on MARRIAGE of FREEHOLDS and
LEASEHOLDS belonging to HUSBAND in TRUST for
SALE (e) with a DECLARATION of TRUST OF THE PUR-
CHASE MONEY by reference to a SETTLEMENT of even
date (f). VARIATIONS for ENFRANCHISED COPYHOLDS.

PARTIES, as in *Prec. I.*, p. 587 (g). *Recite intended marre*, Recitals.
p. 501, f. 1; AND WHAS the sd A. is the este owner in respect

the purchase of other land: L. P. Act, 1925, s. 28 (1); S. L. Act, 1925, s. 73 (xi.).

(c) When an appointment of new trustees becomes necessary the same persons must, subject to any order of the Court, be appointed new trustees of the conveyance on trust for sale and the settlement of the proceeds of sale and the appointment made by two separate instruments: T. Act, 1925, s. 35 (1).

(d) Where a settlor is entitled to a share in the proceeds of sale of land held upon the statutory trusts under Part IV. of the First Schedule of the L. P. Act, 1925, the land itself should, if possible, be partitioned as in *Prec. IX.*, Vol. I., p. 1064, and that part agreed to be taken by the settlor, Land held on statutory trusts.

(e) As to the wide powers now conferred by statute on trustees for sale, see *ante*, p. 546; see also *ante*, p. 609, note (g).

So long as the trustees retain any land subject to the trust for sale they will be entitled to retain the conveyance on trust for sale: L. P. Act, 1925, Custody of deeds.
s. 45 (9).

(f) See last Precedent.

(g) The intended husband and wife should be described throughout this deed by their proper names.

Title. of the fee simple of the ppty hrby assured [subj as hrinar mentioned] & is also the este owner of the ppty hrby assigned in respect of the residue of the term of — yrs limited out of the fee simple throf & grted by the lease parlars whereof are contd in the schedule hrto, *or as the case may be*, see Vol. I., pp. 462, 463 ; AND WHAS upon the treaty for the intended marre it was agrd that the sd freehd & leasehd ppty [enfranchised by virtue of the Ppty Acts, 1922 and 1924] shd be assured & settled in mnier hrinar appearg. NOW THIS DEED made, *&c.*, *continue as at* p. 508 :—

Agree-
ment for
settle-
ment.
Wit-
nesseth.

Convey-
ance of
freeholds.

1. THE SD A. as settlor with the approbation of the sd B. hby grts unto the trees (a) ALL THAT *Parcels*, Vol. I., pp. 480 *et seq.*, To HOLD UNTO the trees in fee simple (b) IN TRUST for the sd A. absolutely until the intended marre, & after the solemnison throf Upon the trusts & subjt to the powers & provons hrinar declared concerng the same & applicable thrtio.

Assign-
ment of
lease-
holds.

2. THE SD A. as settlor with the approbation of the sd B. hby assns unto the trees ALL the ppty comprised in & demised by the schdled lease To HOLD UNTO the trees henceforth for all the residue now unexpired of the sd term of — yrs grted by the sd lease, subjt henceforth to the paymt of the rent thereby reserved & the observance & pformance of the covts by the lessee & condons thrin contained In trust for the sd

conveyed on trust for sale as in the above precedent. If the settlor cannot effect a partition the share in the proceeds of sale should be dealt with in the same way as a share in proceeds of sale arising under another settlement as in Prec. IV., *ante*, p. 592, and notice given to the trustees holding the land. See the form of parcels, *ante*, p. 511, note.

Land
derived
from an
intestate.

Land held on trust for sale by an administrator under s. 33 of the A. of E. Act, 1925, should, similarly, be appropriated under s. 41 of that Act if possible and then settled upon trust for sale.

For a precedent of a settlement of an equitable interest in remainder in land, see Prec. XIV., *post*, p. 616.

Public
Trustee.

(a) The Public Trustee is a corporation sole with perpetual succession (see Public Trustee Act, 1906, s. 1) and where he is made sole trustee the freeholds and leaseholds should be limited to "the Public Trustee & his successors"; see Vol. I., p. 499, note (d). Where the Public Trustee is to be joined with others as trustees, the limitation of the freeholds may be to "A. in fee simple and to the Public Trustee & his successors respectively."

(b) If the land is subject to unredeemed manorial incidents or a compensation rentcharge the habendum should be as in Prec. III., Vol. I., p. 531, and the conveyance produced to the steward: *ib.*, note (a).

A. until the intended marre absolutely & after the solemnison throf Upon the trusts & subjt to the powers & provons hrinar declared concerng the same & applicable thrto.

3. AFTER THE solemnison of the intended marre, the trees shl with the consent in writg of the husbd & the wife & the survor of them durg his or her lifetime & after the death of such survor at the discretion of the trees sell the sd freehold & leasehold premes hby grted & assned at such time or times as the trees shl think proper & so that they shl have full power to postpone (*m*) the sale of all or any pt of the sd premes witht being responsible for any loss weh may result thrfrom.

Trust for sale after marriage.

4. The trees may with such consent and at such discron as afsd raise (*d*) out of the ppty hereby assured or any pt or pts throf and apply for the ppses of the settlemt of even date hrwith hrinar mentd any sum or sums of money for the time being required for the ppses throf and ppty raisable out of investmts representg the proceeds of sale of the ppty hereby assured.

5. THE TREES shl out of the moys arisg from any such sale pay the costs incurred in respect throf or orwise in respect of the premes & shl hold the residue of such sale moys & the rents & profits of the same premes until sale Upon the trusts & with & subjt to the powers & provisions declared & contained concerning the same respvly in a settlemt already prepared & intended to bear even date hrwith & to be made between the same psons who are pties hrto & in the same order.

Trusts of proceeds of sale of rents and profits.

6. *Power for professional trustee to charge*, p. 580, f. 6.

7. *Power to appoint new trustees*, p. 583, f. 2 (*c*).

[8. *Clause restricting liability under statutory covt for title*, p. 586, f. 6.]

9. *Interpretation of "trees,"* p. 586, f. 8.

IN WITNESS, &c.

Schedule.

(*m*) A power to postpone sale is implied in every trust for sale of land unless a contrary intention appears : L. P. Act, 1925, s. 25 (1) : and where there is a power to postpone the sale the trustees are, subject to an express direction to the contrary, not liable in any way for postponing it for any indefinite period in the exercise of their discretion : *ibid.* (2).

(*d*) See T. Act, 1925, ss. 16, 17.

(*c*) See *ante*, p. 611, note (*c*).

XIII.

SETTLEMENT *on* MARRIAGE of REGISTERED LAND
belonging to the HUSBAND *by means of a* TRUST *for*
 SALE *and* DECLARATION of TRUST of the PROCEEDS of
 SALE (a).

Recitals. *PARTIES, as in Prec. I., p. 587: Recite intended marre, p. 501,*
 Title. *f. 1; AND WHAS the husbd is registered under the L. R. Act,*
 Agree- *1925, as proptor of the ppty comprised under the heading*
 ment for *District, &c. with a — title free from incumbees; AND WHAS*
 settle- *upon the treaty for the intended marre it was agrd that the sd*
 ment. *ppty shd be settled in mner hrinar appearg; AND WHAS in*
 Intended *psuance of the sd agrmt the husband has handed the land certfe*
 transfer. *to the trees; AND WHAS a proper instrumt of transfer under*

Settle- (a) No notice of the trusts declared by this settlement will appear on
 ments of the register (see L. R. Act, 1925, s. 74). Where registered land is settled
 registered by way of trust for sale, the trustees, not the tenant for life, are the
 land in proper persons to be registered, see Vol. I., p. 690. The trustees will remain
 trust for registered as proprietors, and it will be their duty to make the proper
 sale. transfer to carry out the sale made by them with the consent of the
 tenant for life.

Save in the cases sanctioned by L. R. Act, 1925, s. 39 (2), and
 L. R. R. 96, the legal estate in the registered land must be vested in the
 trustees by a transfer operating on the register: s. 39 (1). See also
 Vol. I. p. 693. As to a transfer on the appointment of new trustees see
 L. R. Act, 1925, s. 47.

Protec- The equitable interests in the land take effect behind the trust for sale
 tion of and are called "minor interests" (see L. R. Act, 1925, s. 3 (xv.)). The
 minor priority of any minor interest subsisting or capable of taking effect on the
 interests 1st of January, 1926, and which would but for the conversion effected by
 in regis- the new legislation have been a legal estate is not affected by reason of its
 tered statutory conversion into an equitable interest: L. R. Act, 1925, s. 102 (1).
 land. Priorities of dealings with minor interests effected after 1925 are regulated
 by the order in which prorty cautions or inhibitions are registered against
 the registered proprietor: s. 102 (2). The powers of the registered pro-
 prietor are not affected by the lodgment of such caution or inhibition:
 s. 102 (3). The application should be made in form 72 of the Schedule of
 the L. R. R.

Minor A priority caution is entered in the Minor Interests Index, and notice of it
 interests is given to the registered proprietor, but the person lodging it is not entitled
 index. to notice of any intended registered disposition or entry in the register.
 Registration in this Index takes the place of notice to the trustees under
 s. 137 of the L. P. Act, 1925, and the provisions of s. 138 of that Act apply
 as if the Registrar were the trust corporation nominated to receive notices
 and the Minor Interests Index the register therein referred to: L. R. R. 229.

the sd Act of the sd ppty to the trees (b) has been prepared & is intended to be executed by the husbd & handed to the trees immedly after the execution of this deed in accordance with the covt by the husbd hrinar contained ; AND WHAS it is intended that the trees shl forthwith be registered as proptors of the sd ppty ; *general agrmt*, p. 508, f. 23 ; NOW THIS DEED made, &c., as at p. 508 :—

Wit-
nesseth.

1. THE HUSBD hby covts with the trees that he will forthwith execute the sd instrumt of transfer of the sd ppty & hand the same to the trees.

2. THE TREES hby covt with the husbd & the wife that they the trees will forthwith after the execution of such transfer apply to the registrar for registron of themselves as proptors of the sd ppty, & for the entry of a restriction against the sd title number that no disposition shl be registered wtht the consent of the husbd & the wife (c).

Covenant
to apply
for regis-
tration.

3. IMMEDLY UPON such registron as afsd the sd ppty shl be held Upon trust for the husband absolutely until the intended marre & after the solemnison throf Upon the trusts & subjt to the powers & provons hrinar declared concerng the same.

Declara-
tion of
trusts,
&c.

4. AFTER THE solemnison of the intended marre the trees shl, *continue trust for sale of* “ the premes comprsd in the sd title ” as in *Prec. XII.*, clause 3, *ante*, p. 613.

5. THE TREES shl out of the moys arisg from any such sale pay the costs incurred in respect throf or orwise in respect of the premes & shl hold the residue of such sale moys Upon the trusts & subject to the powers & provons hrinar declared concerng the same & shl pay & apply the net rents & profits of the sd premes or of the unsold pt throf for the time being to the pson or psons to whom & for the pposes for wch income of the investmts hrinar directed to be made of the nett moys to arise from the sale throf would be payable or applicable under the trusts hrinar declared if such sale & investmt were actually made.

6. *Trust for investmt of moneys arisg from sale* “ under the trust for sale hrinbfe contd of the premes comprisd in the sd title ” and *power to vary*, p. 573, f. 3.

(b) The transfer will be expressed to be made “ in conson of a marre intended to be solemnised betn A. of — & B. of — . ” See the note to form 19 in the schedule to the L. R. R.

(c) See L. R. R. schedule, Form 75.

7. *Trusts of husband's fortune*, p. 514, f. 1, saying "the income of the residuary or net moneys to arise from any sale under the trust for sale hrinbfe contd of the sd ppty, &c."

8. *Power of apptmt on death of survivor*, p. 522, f. 14, and *trust in default of apptmt*, p. 524, f. 15.

9. *Hotchpot clause*, p. 525, f. 17.

10. *Ultimate trusts*, p. 531, f. 26.

11. *Investment clauses*, pp. 537 *et seq.*

12. *Power to purchase land*, p. 543, f. 9.

13. *Power to take purchased leaseholds in name of beneficiary*, p. 546, f. 13, (i.)-(iii.).

14. &c. *Add such of ff. 1 & 2*, pp. 550, 551, *giving powers in connection with leaseholds, as may be required.*

15. *Power to apportion payments*, p. 579, f. 3, *with variation in note (f).*

16. *Power for professional trustee to charge*, p. 580, f. 6.

17. *Power to appoint new trustees*, p. 583, f. 2.

18. *Interpretation of "trees,"* p. 586, f. 8.

IN WITNESS, &c.

XIV.

SETTLEMENT ON MARRIAGE of EQUITABLE INTEREST in REMAINDER in LAND (a) belonging to the HUSBAND.

PARTIES, as in *Prec. I.*, p. 587. *Recite intended marre*, p. 501, f. 1; AND WHAS under or by virtue of the will dated &c., & proved, &c., of X. who died on the — day of — the husband is absolutely entitled to the ppty specified in the schedule hrtto for an equitable interest in fee simple in remainder subj't to the life intt thrin of Y. AND WHAS by a vestg assent dated, &c., & made, &c., the sd ppty was vested in the sd Y. in fee simple upon the trusts upon wch under the sd

(a) This precedent is intended to meet the case of a settlor entitled to land in remainder under a settlement otherwise than by way of trust for sale. Such interests are equitable only: L. P. Act, 1925, s. 1, and the legal estate in fee simple is vested in the tenant for life or statutory owners. Notice of this settlement should be given to the trustees of the head settlement and by s. 17 (1) (a) of the S. L. Act, 1925, they are prohibited after receipt of such notice from discharging the land from the trusts of the head settlement until after conveyance to the trustees of the derivative settlement.

will the same ought to be held from time to time and L. & M. were declared to be trees of the settlemt enacted by the sd will for the ppses of the S. L. Act, 1925. AND WHAS upon the treaty for the intended marre it was agreed that the sd intt should be assned & settled in mner hrinar appearg. NOW THIS DEED, &c., as at p. 508.

1. THE HUSBD as settlor with the approbon of the wife hrby assns unto the trees ALL THAT the rt and intt to which the husband is entitled under the will of the sd X. in the ppty specified in the Schedule hereto or which may hrafter become subjt to the trusts of the sd settlemt expectant on the death of the sd Y. To HOLD the same in trust for the husbd absolutely until the intended marre & after the solemnison throf Upon the trusts & subjt to the powers & provons hrinar declaed & contained concerng the same.

Assign-
ment of
interest
in re-
mainder.

2. THE HUSBD hrby covenants with the trees that immedly upon the death of the sd Y. he will direct the special psonal repvs of the sd Y. (b) and the trees of the sd settlemt to transfer the ppty then subjt to the trusts throf and vested in them resply to the trees upon the trusts applicable thereto resply and will procure a declaron to be made by the trees of the sd settlemt discharging the sd ppty from the trusts affectg the same under the sd settlemt.

Covenant
to pro-
cure as-
surance
of legal
estate.

3. UNTIL SUCH transfer as afsd is completed the trees may at any time or times give such notices obtain such orders take such proceedgs & do such other acts & things for the ppose of perfectg provg or upholdg their title to all or any pt of the sd trust premes or protectg their intts thrin under this deed as they may deem necy or expedient & for all or any such ppses may use the name of the husbd as an authorisg or consentg party & also at his cost instruct solors to act on their behalf accordgly.

Power to
protect
equitable
interest.

4. AFTER THE solemnison of the intended marre the trees shl hold the sd trust premes upon trust as and when the intt

Declara-
tion of
trusts.

(b) Under s. 22 (1) of the A. of E. Act, 1925, the tenant for life may appoint special executors of the settled land and in default of any such appointment the trustees of the settlement at the time of his death are deemed to be so appointed and probate limited to the settled land is granted to them. By s. 24 special personal representatives may dispose of the settled land without the concurrence of the general personal representatives. A remainderman of full age absolutely entitled to the settled land is entitled under s. 7 (5) of the S. L. Act, 1925, to call for a conveyance to himself.

Powers of
special
personal
represen-
tatives.

thrin hrinbfe assured shl have fallen into posson either to retain (x) the same or any pt or pts throf respby as actually invested so long as the trees think fit or at any time or times with the consent of the husband *continue trust for sale and investment as at p. 512, f. 2, including with the proceeds of sale to be invested* "all capital money wch may be received in respt of the intt hrinbfe assured."

5. Add clauses 7—18 of *Prec. XIII.*, ante, p. 616, adding if desired f. 7 on p. 586.

IN WITNESS.

Schedule.

XV.

SETTLEMENT on MARRIAGE of FURNITURE and HOUSEHOLD EFFECTS belonging to BOTH SPOUSES, where STOCK EXCHANGE SECURITIES belonging to both are also settled. COVENANT by HUSBAND to pay a SUM to the TRUSTEES for the purchase of ADDITIONAL FURNITURE (a).

Recitals. Agree- ment to settle furniture. Wit- nesseth.	<i>PARTIES, as in Prec. I., p. 587. Recitals as in Prec. I., inserting before the recital of the general agrmt "AND WHAS upon the treaty for the intended marreit was agrd that the furniture & effects specified in the third schdle hto, wch belong to the husbd (hrinar called the husbd's chattels), & the furniture & effects specified in the fourth schdle hto, wch belong to the wife (hrinar called the wife's chattels) shd be assned to the trees Upon the trusts hrinar declared concerng the same respby." NOW THIS DEED made, &c., continue as at p. 508 :—</i>
--	--

(x) See L. P. Act, 1925, s. 25 (4), and ante, p. 498.

Legal
owner-
ship and
possession of
settled
chattels.

(a) Where movable chattels are assigned to the trustees the user and possession thereof by the *cestui que trust* in accordance with the settlement vests the legal ownership in the trustees without their taking actual possession; *Re Magnus*, [1910] 2 K. B. 1049. Where the possession is ambiguous, e.g. where furniture settled on one of the spouses is in the house occupied by both, the possession is deemed to be in that one: *Pollock and Wright on Possession*, 24; *Ramsay v. Margrett*, [1894] 2 Q. B. 18; *French v. Gething*, [1922] 1 K. B. 236.

It follows that, in the ordinary case of furniture belonging to one of the spouses being, at the time of the marriage, in the house intended to be occupied by them, nothing except the assignment to the trustees in the marriage settlement is required to vest the legal ownership in them; but

1. THE HUSB'D with the approbation of the wife hby assns to the trees the husbd's chattels To HOLD UNTO the trees In trust for the husbd until the intended marre & after the solemnison throf Upon the trusts & subj't to the powers & provons upon & subj't to wch investmts representing the ppty specified in the first schdle hto are hrinar directed to be held.

Assign-
ment of
furniture.

2. *Corresponding assignment of the wife's chattels upon the trusts of the ppty specified in the second schedule.*

3-9. *Clauses 1-7 of Prec. I. (b), p. 588.*

10. WITHT PREJUDICE to the exercise of any power hby made exercisable over the husbd's fortune or the wife's fortune the trees shl durg the lives & life of the husbd & wife & the survor of them allow the pson for the time being entitled to the income of the husbd's fortune to use & enjoy the husbd's chattels, & the pson for the time being entitled to the income of the wife's fortune to use & enjoy the wife's chattels (c).

Trusts of
furniture
for
spouses.

11. NOTWITHSTDG THE trusts, powers & provons hby declared concerng the husbd's fortune & the wife's fortune the trees may

where the chattels are warehoused a delivery order should be given to the trustees and communicated to the person in whose custody they are. A wife may sue her husband for wrongful detention of chattels, which by the settlement are assigned to trustees for her, without joining the trustees as parties: *Healey v. Healey*, [1915] 1 K. B. 938.

A covenant to settle after-acquired property confers an equitable interest only on the trustees. It follows that if the chattels come into existence, and if before the trustees obtain or a *cestui que trust* obtains possession of them, a stranger without notice of the settlement acquires a legal interest in them, his title prevails: *Joseph v. Lyons*, 15 Q. B. D. 280; *Hallas v. Robinson*, *ib.* 288.

After-
acquired
chattels.

It is unnecessary in a settlement of furniture to insert a covenant for further assurance.

As to marriage settlements of chattels in connection with the Bills of Sale Acts, see *ante*, p. 160.

(b) To ensure that the hotchpot clause shall include the additional sum agreed to be settled for purchase of furniture, it will be advisable to use f. 18 on p. 525; see note (b) on that page.

(c) Where the husband takes a protected life interest in the wife's fortune, add, "Provid nevertheless that during the pts (if any) of the life of the husbd durg wch after the death of the wife he shl not be entitled to receive the income of the wife's fortune, the trees may allow any pson or psons, being an object or objects of the discretionary trust applicable to the income of the wife's fortune to have the use & enjoyment of the wife's chattels."

Power
to allow
guardians
to use
furniture.

after the death of the survivor of the husband & wife at their discretion during the minority of any child of the intended marriage, allow the guardian or guardians of such child or any person or persons nominated by such guardian or guardians to have the use & enjoyment of the husband's chattels & the wife's chattels or any part thereof for the benefit of all or any of the children & issue of the intended marriage (a).

Covenant
to pay
sum for
purchase
of furniture.

12. THE HUSBAND hereby covenants with the trustees that he will forthwith after the solemnization of the intended marriage pay to the trustees the sum of £—, to be held by them Upon trust to apply such sum or any part thereof from time to time in the purchase of such furniture or other household effects of a suitable character or description as the husband & wife or the survivor of them shall direct, or to pay the same from time to time to the husband & wife or the survivor of them for the purpose of such purchase or purchases without being in any way concerned to see to the application thereof.

Trusts
of purchased
furniture.

13. THE TRUSTEES shall hold all such furniture & effects as may be purchased (whether by the trustees or otherwise) Upon the trusts & subject to the powers & provisions hereby declared concerning the husband's chattels, & shall hold so much of the said sum of £— as shall not for the time being have been so applied or paid Upon the trusts & subject to the powers & provisions hereby declared concerning the husband's fortune.

Inventories,
&c.

14. INVENTORIES OF the husband's chattels & the wife's chattels & of any furniture or effects purchased under the powers hereinbefore contained shall from time to time be made, &c., *continue powers as to insurance & preservation of furniture*, p. 545, f. **12**, saying "including the removal of it from any mesne."

15-18. *Clauses 8-11 of Prec. I.*, p. 588.

IN WITNESS, &c.

Schedules.

(a) The object of this clause is to enable the furniture to be retained after the deaths of the parents, so long as any of the infant children continue to live at home.

XVI.

SETTLEMENT on MARRIAGE of MONEY intended to be EMPLOYED by the HUSBAND in his BUSINESS, on TRUSTS for HIMSELF, his WIFE and ISSUE, including ISSUE by a FORMER MARRIAGE (b), and of FURNITURE belonging to the HUSBAND, and MONEY to be applied in the purchase of other FURNITURE in trust for the WIFE.

PARTIES, as in *Prec. I.*, p. 587. *Recite intended marre*, p. 501, Recitals.
 f. 1; AND WHAS the husbd has — chln by his former marre Family.
 with L. now living, all of whom are under the age of twenty-
 one yrs & unmarried, or as the case may be; AND WHAS in Agree-
 psuance of an agrmt made upon the treaty for the now ment for
 intended marre the husbd has pd the sum of £6000 to the settle-
 trees in trust for the husbd until the now intended marre & ment.
 after the solemnison throf upon the trusts hrinar declared
 concerng the same & has agrd to assn the furniture & effects
 specified in the schdle hto to the trees Upon the trusts hrinar
 declared concerning the same: NOW THIS DEED made, Wit-
 &c., continue as at p. 508:— nesseseth.

1. THE TREES shl after the solemnison of the intended Trust for
 marre stand possessed of the sum of £5000 (pt of the sd invest-
 sum of £6000) Upon trust to invest the same with the ment.

(b) Limitations in favour of collaterals are not primarily within the marriage consideration, although they may be supported by valuable consideration arising from special contract: see 3 *Dav. Prec.*, 3rd ed., 670; *Dart*, 7th ed., 922; *Re Anstis*, 31 Ch. D. 596; *Re Cameron & Wells*, 37 Ch. D. 32; *Tucker v. Bennett*, 38 Ch. D. 1. The mere recital of an agreement for the settlement in the usual form would not, however, suffice for the purpose: *De Mestre v. West*, [1891] A. C. 264; but where the limitations in favour of the issue of the intended marriage are so interwoven with or dependent on those in favour of collaterals that the one cannot take effect without the other, the latter will be held to be within the consideration arising out of the mutual contract: *Mackie v. Herbertson*, 9 App. Cas. at p. 337; *De Mestre v. West*, *sup.*

After some conflict of opinion it is now settled that the marriage consideration extends only to the husband and wife and the issue of the intended marriage and not to the issue of either party by a former (*Price v. Jenkins*, 4 Ch. D. 483; *Re Cameron & Wells*, *sup.*; *Att.-Gen. v. Jacobs Smith*, [1895] 2 Q. B. 341; *Carruthers v. Peake*, 55 Sol. J. 291); or subsequent (*Clayton v. Wilton*, 3 Madd. 302) marriage; nor, of course, to the previous illegitimate issue of either party: *Mackie v. Herbertson*, *sup.*; *De Mestre v. West*, *sup.*

Limita-
tions to
colla-
terals,

— or to
issue of
former
or sub-
sequent
marriage.

consent of the husbd & wife or the survor of them during their, his, or her lifetime & after the death of such survor at the discreon of the trees in or upon any of the investmts hby authorised with power with such consent or at such discreon to vary or transpose any investmts into others of any nature hby authorised.

Life
interests.

2. THE TREES shl pay the income of the sd sum of £5000 & the investmts for the time being representg the same (hrinar called the trust fund (a)) to the wife during her life witht power of anticipon; And after the death of the wife shl pay the income of the trust fund to the husbd if survivg during his life.

Charge
of main-
tenance.

3. *Proviso charging husband's life interest with maintenance*, p. 521, f. 13, saying, "for such of the chln of the former or the now intended marre as shl, &c."

Power of
appoint-
ment and
trust in
default.

4. (i.) *Power of apptmt on death of survor (b)*, p. 522, f. 14, & *trust in default*, saying, "In trust for all or any the chln or child of the former & the now intended marre who being male [have or has attained or (c)] shl attain the age of 21 yrs or being female [have or has attained or] shl attain that age or [have or has married or] shl marry, & if more than one in eql shares."

Propor-
tion to
be ap-
pointed
to re-
spective
families.

(ii.) The pt of the trust fund weh may be appointed by the wife after the death of the husbd under the power hrinbfe contd to the child or chln of the now intended marre shl not bear a greater proportion to the remainder of the trust fund than the number of the chln of the now intended marre who being male shl attain the age of twenty-one yrs or being female shl attain that age or marry shl bear to the number of the chln of the former marre who being male [have attained or] shl

(a) Care must be taken to adhere strictly to this phrase throughout the draft.

(b) In the power of appointment among children, the trust in default, the advancement clause (if any) and the ultimate trust, the reference will be to the children or remoter issue or the children or child (as the case may be) "of the now intended or the former marre."

Wife's
power of
appoint-
ment.

It may be desirable not to give the wife a power of appointment if she survives the husband or to restrict her power as in the text, so that she cannot appoint to her own children more than their fair share.

(c) If any child of the former marriage has already attained 21, or being female has married, insert the words in brackets in this and the next clause.

attain the age of twenty-one yrs or being female [have attained or] shl attain that age or [have married or] shl marry.

5. *Hotchpot clause*, p. 525, f. 17.

6. *Ultimate trust (d)* "for the husbd," p. 531, f. 26.

7. *Investment clause*, pp. 537 *et seq.*

8. *Power to lend part of trust funds to husband*, p. 542, f. 8.

9. THE HUSB (e) with the approbation of the wife hby assns unto the trees, *Parcels for furniture*, p. 511, note: In trust for the husbd until the now intended marre & after the solemnison throf In trust for the wife absolutely.

Assign-
ment of
furniture.

10. AFTER the solemnison of the now intended marre the trees shl stand possessed of the sum of £1000 (residue of the sd sum of £6000) Upon trust at the request of the husbd & wife or the survor of them to apply the whole or any pt or pts throf from time to time in the pchase of such furniture or other househd effects of a suitable character & description as the husbd & wife or the survor of them shl direct or to pay the whole or any pt or pts throf from time to time to the husbd & wife or the survor of them for the ppose of such pchase or pchases witht being in any way concerned to see to the applicon throf.

Trusts
of sum
to be
spent on
furniture.

11. THE TREES shl stand possessed of all such furniture & effects as may be so pchased whether by the trees or orwise In trust for the wife absolutely.

Trusts
of furni-
ture pur-
chased.

12. THE TREES shl stand possessed of the sd sum of £1000 until the same shl have been so applied or pd as afsd or of so much throf as shl not for the time being have been so applied or pd Upon trust to invest the same with such consent or at such discron, in or upon such investmts & with such power to vary the same as are hrinbfe authorised or directed in respt of the sd sum of £5000, except that the trees may by way of interim investmt (f) pay the whole or any pt of the sd sum of £1000 into a bank to a deposit or other acct, & except also that no

Trusts
of money
until
spent.

(d) If any of the children of the former marriage have already attained twenty-one or being females have married, the ultimate trust will not be required.

(e) It is unnecessary in a settlement of furniture to insert a covenant for further assurance.

(f) Trustees have a statutory power to place money on deposit with a bank whilst seeking an investment: T. Act, 1925, s. 11 (1).

pt throf shl be advanced to the husbd under the power in that behalf hrinbfe contd, And upon trust to hold such investmts & the ppty for the time being representg the same Upon the trusts & subjt to the powers & provons hrinbfe declared concerng the trust fund.

Inven-
tories, &c.

13. Inventories of all furniture & effects pchased under the trust hrinbfe contd shl from time to time be made, &c., *continue powers as to insurance & preservon of furniture*, p. 545, f. **12**, saying, "includg the removal of it from any messe."

14. *Power to apportion paymts*, p. 579, f. **3**, with variation in note (f).

15. *Power for professional trustee to charge*, p. 580, f. **6**.

16. *Power to appoint new trustees*, p. 583, f. **2**.

17. *Interpretation of "trees,"* p. 586, f. **8**.

IN WITNESS, &c.

The Schedule above referred to.

XVII.

SETTLEMENT on MARRIAGE, of DIAMONDS upon the WIFE for her Inalienable Use.

Recitals.

PARTIES, as in *Prec. I.*, p. 587. *Recite intended marre*, p. 501, f. **1**; AND WHAS the wife is absolutely entitled to the diamonds & the settgs throf, the parlars whrof are specified in the schdle hto, & upon the treaty for the intended marre it was agrd that the wife shd assn the same to the trees Upon the trusts hrinar declared concerng the same, NOW THIS DEED made, &c., *continue as at* p. 508:—

Wit-
nesseth.

1. *Assnmt of diamonds & settings, referrg to schdle*, p. 508, f. **1**, & p. 511, note, *omitting the words "as settlor."*

Trusts.

2. AFTER THE solemnison of the intended marre the trees shl allow the wife to have the psonal use & enjoymt of the sd diamonds & settgs durg her life witht power of anticipon durg her now intended or any future coverture.

3. AFTER THE death of the wife the trees shl stand possed of the sd diamonds & settgs UPON TRUST, &c., *continue ulterior trusts*.

Power to
reset dia-
monds.

4. THE WIFE may from time to time have the sd diamonds reset, but not so as to diminish the intrinsic value of the settgs throf.

5. *Provisions as to insurance, adapting f. 12, on p. 545, and saying "loss or damage by fire, burglary or larceny."*

6. NEITHER THE wife nor the trees shl be liable for the loss or destruction of the sd diamonds & settgs, or any of them, & the trees shl not be bound to interfere as to, or to see to, the safe custody of the sd diamonds & settgs.

7. THE TREES, or any agent authorised by them, may at any time or times, at the request of any pson interested, or witht any such request, if the trees in their discrion shl think it neey for the safe preservon of the sd diamonds & settgs, take posson of the same, & retain such posson durg such period as the trees shl think fit.

Power to trustees to interfere.

8. *Power to appoint new trustees, p. 586, f. 2.*

IN WITNESS, &c.

The Schedule above referred to.

XVIII.

DEED OF GIFT (a) of FURNITURE, &c., by HUSBAND to WIFE (b).

THIS DEED OF GIFT made by A., of, &c. (hrinar called the husbd). WHAS no settlmt was made upon the marre of the husbd with B. his wife (hrinar called the wife) for her benefit

Recitals.

(a) This deed requires an *ad valorem* stamp, which must be adjudicated: Stamp. Fin. (1909-10) Act, 1910, s. 74 (1) & (2); and estate duty will be payable if the husband dies within three years: s. 59.

(b) A voluntary assignment of chattels by deed is of course effectual without delivery; but a mere letter or other parol gift without delivery cannot operate at law, and to be effectual in equity must take the form of a declaration of trust; see Goodeve P. P., 5th ed., 83, 92; *Re Breton*, 17 Ch. D. 416.

As to voluntary gift of chattels.

The husband can, at law, make a direct gift of this kind to the wife, but as an assignment of after-acquired chattels is void at law, see *Lunn v. Thornton*, 1 C. B. 379; the assignment in this Precedent is supplemented by a declaration of trust.

As to gift by husband to wife.

The gift, not being a security for money, is outside the Bills of Sale Act, 1882, but if the apparent possession remains in the husband is within the Act of 1878. The possession in the case in the text of the things in the dwelling-house, but not in the office, is in the wife: *M. W. P. Act*, 1882; *French v. Gething*, [1922] 1 K. B. 236. See *ante*, p. 618, note (a).

Validity as against creditors.

The fact of its being a bill of sale within the latter Act does not affect its validity as between the parties, but only as to creditors, see *Davis v. Goodman*, 5 C. P. D. 128. As to the effect of a subsequent bill of sale by the

Wit-
nesseth.
Assign-
ment of
existing
and future
furniture,
&c.

Haben-
dum to
wife ab-
solutely.
Declara-
tion of
trust of
future
furniture.

Proviso
as to loss.

or orwise : AND WHAS the husbd is desirous of makg such gift or disposon in favour of the wife as is hrinar contained : NOW THIS DEED WITNESSETH that in conson of natural love & affection, & for divers other good causes & consons, the husbd hby absolutely gives & makes over unto the wife ALL & SINGR the furniture, plate, linen, china, glass, pictures, prints, books, musical instrumts, & househd effects, & all jewels, trinkets, & watches, & all other articles & effects (a) of domestic, office or psonal use or ornamt, & movable effects whatsr, [& whether] in his dwelling-house [or office or place of business or elsewhere] (inclusive of wines & consumable stores & provons, but exclusive of moy & secs for moy, letters, manuscripts, business books & accts) of or to wch resply the husbd is now possed or entitled, or shl or may at any time hrafter durg the joint lives of himself & the wife become possed or entitled, whether by gift or pchase or any other mode of acquison whatsr, includg his intt in any articles or effects of any such nature as afsd wch may in law be the joint ppty of him & the wife, To HOLD UNTO the wife for her own absolute use & benefit, free from the control, interference, & engagemts of the husbd. AND in order to give full effect to the gift or disposon hrinbfe contd if & so far as the same may not in law be capable of operatg accordg to its tenor, the husbd hby declares that he & his exs & ads will stand possed of all the articles & effects hrinbfe mentd, IN TRUST for the wife for her absolute use & benefit as afsd. PROVD ALWAYS that neither the husbd nor his exs or ads shl be answerable for the loss or destruction of or any damage wch may happen to any of the sd articles & effects. IN WITNESS, &c.

husband in favour of a person without notice of the settlement, see *ante*, p. 618, note.

The gift is also liable to be defeated by the husband's bankruptcy within two years after the date of the settlement, or within ten years thereafter unless it can be proved that the settlor was solvent at that date: Bankruptcy Act, 1914, s. 42. As to the position of a *bonâ fide* holder for value from the donee, and as to the meaning of "settlement" within this section, see *post*, p. 632, note.

Alterna-
tive form. An alternative form of gift would be to the wife during the joint lives, with remainder to her absolutely if she should be the survivor, but not otherwise.

(a) Such terms in a gift will be construed widely: *Anderson v. Anderson*, 72 L. T. 313.

XIX.

SETTLEMENT on MARRIAGE of a WIDOW under a POWER
in the SETTLEMENT made on her FIRST MARRIAGE,
where the amount which may be settled depends on
the NUMBER of CHILDREN of the FIRST or BOTH
 MARRIAGES (b).

PARTIES, A., *wife* (hrinar called the wife), 1; B., *husbd* (hrinar called the husbd), 2. *Recite intended marre*, p. 501, f. 1: AND WHAS this deed is suppl to a settlemt (hrinar called the settlemt) dated, &c., & made, &c., in conson of the marre (hrinar called the former marre) then intended & shortly afterwards solemnised betn the wife & X. of, &c., her late husbd, by virtue of wch (owing to the death of the sd X. on the — day of —) the wife is entitled during her life to receive the income of the whole of the ppty now subjt to the trusts of the settlemt wch consists of the ppty specified in the first schedule hto (representg the ppty in the settlema called the husbd's fortune) & of the ppty specified in the second schdle hto (representg the ppty in the settlemt called the wife's fortune & certain ppty wch has become subjt to the trusts of the settlemt by virtue of the provons thrin contained for the settlemt of the after-acquired ppty of the wife, *or as the case may be*) wch ppty specified in the second schdle hto & the ppty for the time being representg the same is hrinar called the wife's total fortune; AND WHAS subjt to the interests of the chln & remoter issue of the former marre the wife has a general power of

Parties.
 Recitals.
 Title
 under
 former
 settle-
 ment.

Power of
 appoint-
 ment.

(b) This settlement, except so far as it affects the widow's life interest and her interest under the ultimate trusts in the settlement made on her first marriage, is made in exercise of a power in the form, *ante*, p. 570. There is some difference of opinion as to the proper form of the settlement. Sometimes different persons are appointed trustees of the new settlement; but as the appointed fund will not be vested in them the statutory powers of maintenance and advancement cannot be exercised by them; hence this course appears to be inexpedient. Sometimes the trustees of the original settlement are made parties to the new settlement; but on the whole it appears expedient to follow the usual practice in appointments under powers, and not to make the trustees parties. In this case, notice of the new settlement must, of course, be given to them.

Settle-
 ments on
 second
 marriage.

If thought fit, the wife may be restrained from anticipating her life interest under the original settlement; and her interest under the ultimate trusts of that settlement should be dealt with, for otherwise it may on her death devolve on the infant children of the second marriage.

Power
of with-
drawal
from
former
settle-
ment.

Family.

Trustees.

Agree-
ment for
settle-
ment.

Wit-
nesseth.

Appoint-
ment
under
power
of with-
drawal.

Life
interest.

Power of
appoint-
ment.

apptmt (hrinar called the general power) over the wife's total fortune & in default of such apptmt is absolutely entitled thereto ; AND WHAS the settlemt contains a power for the wife in contemplon of a future marre by deed to appt that a pt (depending on the number of chln of the former [& any future] marre who being male shd attain the age of twenty-one yrs or being female shd attain that age or marry) of the wife's total fortune shd be held upon such trusts & with & subj to such powers & provons in favour of any after-taken husbd & her issue by him as are thereby authorised (wch power is hrinar called the power of withdrawal) ; AND WHAS there were — chln of the former marre & no more all of whom are infants & none of whom being female have been married (a) ; AND WHAS the ppty specified in both schdles hto now stands in the names [or under the legal control] of K., L., & M. the psnt trees of the settlemt who or the survors or survivor of whom or other the trees or tree for the time being of the settlemt are hrinar called the trees ; AND WHAS upon the treaty for the intended marre it was agrd that the wife shd settle the interests to wch she is or may become entitled under the settlemt & that she shd exercise the general power & the power of withdrawal in mner hrinar appearing ; NOW THIS DEED made, &c., *continue as at p. 508* :—

1. IN EXERCISE of the power of withdrawal & of every other power enabling her in this behalf the wife as settlor hby appts that after the solemnison of the intended marre the greatest pt of the wife's total fortune wch she may in the events wch shl happen be authorised to appt (wch pt & the ppty for the time being representg the same is hrinar called the trust fund) shl be held Upon the trusts & subj to the powers & provons hrinar declared concerning the same.

2. AFTER THE death of the wife the trees shl pay the income of the trust fund to the husbd & his assns durg his life.

3. *Power of apptmt on death of survivor*, p. 522, f. 14, saying, "such chln or issue to take vested interests not later than

(a) In this Precedent it is assumed that none of the children of the former marriage have attained a vested interest. If any child has done so, the power of appointment in default of issue will, of course, not be exercisable, and the deed must be modified accordingly.

twenty-one yrs from the death of the wife " & trust in default of apptmt, p. 524, f. 15.

4. Hotchpot clause, p. 525, f. 17.

5. IN EXERCISE of the general power & of every other power enabling her in this behalf & by virtue of her intt under the settlemt the wife hby appts & declares that if there shl be no child of the former marre who being male shl attain the age of twenty-one yrs or being female shl attain that age or marry, then subjt to the trusts, powers & provons contained in the settlemt & to the powers by law vested in the trees & to every exercise of such respective powers the trees shl after the death of the wife stand possessed of the entirety of the balance of the wife's total fortune Upon the trusts & with & subjt to the powers & provons hrinbfe declared concerng the trust fund.

Appoint-
ment
under
general
power.

6. IF THERE shl be no child either of the former or of the intended marre (b) who being male shl attain that age or being female shl attain that age or marry, the trees shl stand possessed of the wife's total fortune In trust (subjt to the trusts, powers & provons contd in the settlemt & in this deed) for such pson or psons & for such pposes, &c., *continue as at p. 531, saying instead of "the wife's fortune," "the trust fund or the wife's total fortune, as the case may be," & instead of "witht having been married," "witht leavg the husbd or any issue of the intended marre her surviving."*

Ultimate
trusts.

7. DURING THE life of the wife the trees shl pay the income to wch she shl for the time being be entitled under the settlemt to her witht power of anticipon.

Restraint
on antici-
pation.

IN WITNESS, &c.

Schedules.

(b) If the trusts in favour of the children of the intended marriage fail "the trust fund" reverts to the issue of the former marriage.

XX.

ARTICLES *under SEAL for a SETTLEMENT on MARRIAGE (a).*

Wit-
nesseth.

PARTIES, as in Prec. I., p. 587. WITNESSETH that in conson of a marre wch is intended forthwith to be solemnised betn the husbd & wife, it is hby agrd as follows (that is to say) :—

Agree-
ment for
settle-
ment.

1. A SETTLEMT of the real & psonal ppty comprised & described in the schdle hto shl, as soon as may be after the solemnison of the intended marre, be prepared by the trees in accordce with the provons expressed in the sd schdle.

Power to
modify.

2. THE TREES shl have full power with the consent in writg of the husbd & wife or the survor of them (b) in case the sd settlemt shl be executed within one yr after the date of this

As to
articles
for a
settle-
ment.

(a) It is always desirable to avoid if possible an agreement or articles for a settlement, and to have an actual settlement. This Precedent is intended for a case in which there is no time for settling the details of and preparing a formal settlement, the proposals being given in a schedule. For a form of such a settlement, see *Prec. II., ante*, p. 589, and see also 3 *Dav. Prec.*, 3rd. ed., 663; 2 *White & T. L. C.*, notes to *Lord Glenorchy v. Bosville*. As to the construction of marriage articles, see *Seton*, 7th ed., 1652; *Norton on Deeds*, 609; *Vaizey on Settlements*, 140; as to rectifying settlements not in accordance with the articles, see *Seton*, 7th ed., 1643; *Vaizey*, 1563. As to the *ad valorem* stamp on articles for a settlement, see *Stamp Act*, 1891, schedule, tit. "SETTLEMENT." The stamp on a settlement made in pursuance of articles should be adjudicated, see s. 106.

As to
appoint-
ment of
attorney
in case of
absence
of parties.

(b) If the parties are going abroad after the marriage each should appoint another person to act on his or her behalf in settling the terms of the settlement, and give a power of attorney to execute the settlement and any necessary conveyances, &c.

Appoint-
ment of
attorney.

The following is a form of clause appointing an attorney so as to be irrevocable (except by deed) under the *L. P. Act*, 1925, s. 127 :—

"THE HUSBD hby appts L., of, &c., to be the atty of him the husbd in his name or orwise on his behalf to execute the sd intended settlemt & all such assurces, deeds, transfers, & instrumts as afsd, & to exercise all powers & discrns hby given to him, on his behalf, & to act in all respts on behalf & as the repve of him the husbd in relation to the sd settlemt & premes, & hby declares that the apptmt lastly hrinbfe contd shl be irrevocable [for one yr from the date hrof] except by an express revocon by deed notified to the sd L."

The appointment of an attorney by the wife, as to which see *Vol. I.*, p. 204, would be in the same form.

deed, but not orwise, to modify or depart from the provons expressed in the sd schdle in any mner & to any extent either as regards the ppty to be comprised in the settlemt or the mode or form of settlemt or orwise as may be deemed necy or desirable, & to insert such other or additional or extended powers & provons as may be thought pper, the intention of the pties hto being that the sd settlemt when executed by the trees with the concurrence of the husbd & wife or the survivor of them shl not be liable to be questioned or in any mner objected to by reason of any want of conformity to this deed or orwise.

3. THE HUSB & wife & their respective exs, & ads shl, when required by the trees, & the trees shl also execute such settlemt & shl also execute & do all such convces, assurances, deeds, transfers, instrumts, & acts as may be necy or pper in order fully to effectuate the sd settlemt.

Agreement to execute settlement, &c.

4. UNTIL THE sd settlemt, assurances, deeds, instrumts, & acts, shl have been executed & done as afsd the sevl psons in whom the ppty comprised & described in the schdle hto is now vested resply, & their respective exs, & ads, shl stand possessed of & interested in the same Upon the trusts & subject to the powers & provons in the sd schdle expressed or implied in relation thereto resply.

Declaration of trust.

5. *Power to appoint new trustees*, p. 583, f. 2.

6. THE COSTS of & incidental to the negotiation, preparon, engrossmt, execution by all pties, and stamping of this deed & of the settlemt, assurances, deeds, & instrumts afsd, & of doing any other acts for effectuatg the sd settlemt shl be pd by the husbd out of his own moys.

Costs (c).

[7. A DECLARON by the trees in the sd settlemt to the effect that the same is intended to carry out or effectuate & to supersede this deed shl for all pposes & as against all psons interested be conclusive in that behalf.]

As to settlement superseding articles.

8. *Interpretation of "trees,"* p. 586, f. 8.

IN WITNESS, &c. (d).

The Schedule above referred to.

(c) See *ante*. p. 580, note (c).

(d) A general equitable charge under the L. C. Act, 1925, s. 10 (1), Class C. (iii.), should be registered against the estate owners of the land, but it is liable to be overridden by trustees for sale exercising their powers under s. 2 (2) of the L. P. Act, 1925.

XXI.

VOLUNTARY SETTLEMENT *by a BACHELOR on HIMSELF*
with provisions for a FUTURE MARRIAGE (a).

Parties. THIS SETTLEMENT made, &c., Betn A. of, &c. (hereinafter called the settlor (b)), of the one pt, & B. of, &c., & C. of, &c. (hereinafter

Law as to voluntary settlement. (a) As to voluntary settlements generally, see Vaizey, pp. 89 *et seq.*, and 1526 *et seq.*; 3 Dav. Prec., 3rd ed., 675 *et seq.*; and for cases where a deed of gift has been held to be a testamentary instrument, see Jarman on Wills, 6th ed., pp. 27 *et seq.*

The following points should especially be remembered, as to such settlements:—

Validity as regards creditors. 1. They may be impeached as made with intent to defeat creditors under s. 172 of the L. P. Act, 1925, re-enacting 13 Eliz. c. 5; see 1 Smith's L. C., notes to *Twyne's Case*; 3 Dav. Prec., 3rd ed., 675; *Ex p. Mercer*, 17 Q. B. D. 290; *Godfrey v. Poole*, 13 App. Cas. 497; *Ideal Bedding Co., Ltd. v. Holland*, [1907] 2 Ch. 157; or one creditor only: *Edmunds v. Edmunds*, [1904] P. 362; *Re Fasey*, [1923] 2 Ch. 1. Delay by a creditor in taking proceedings, not long enough to bar his legal right, is no defence to an action; *Re Maddever*, 27 Ch. D. 523. A voluntary settlement honestly entered into, all existing debts being paid and the settlor retaining an income sufficient for probable requirements, is not void under the statute, *Re Lane-Fox*, [1900] 2 Q. B. 508; and see *Re Holland*, [1902] 2 Ch. 360.

Voluntary conveyances. 2. Section 173 (1) of the L. P. Act, 1925, re-enacting the Voluntary Conveyances Act, 1893, provides that, subject (sub-s. (2)) to cases in which there have been dealings for value before the 29th June, 1893, a voluntary settlement of land if made *bonâ fide* and without any fraudulent intent shall not be deemed fraudulent by reason only of any subsequent purchase for value, or be defeated by a conveyance made on such purchase. As to whether a purchase can be defeated, which if made *bonâ fide* in the name of a wife or child would constitute an advancement, see 54 Sol. J. 113.

Consideration. 3. A small *bonâ fide* consideration is sufficient to support a voluntary settlement against creditors: *Re Johnson*, 51 L. J. Ch. 503; and was sufficient to support a voluntary settlement of land against a disposition for value by the settlor: *Townend v. Toker*, L. R. 1 Ch. 446; *Bayspoole v. Collins*, L. R. 6 Ch. 228. A conveyance by a trustee to avoid the consequences of a breach of trust: *Sharp v. Jackson*, [1899] A. C. 419; or an assignment of the fruits of an action for tort: *Glegg v. Bromley*, [1912] 3 K. B. 474; is sufficient. And as to what constitutes a purchaser for valuable consideration under s. 42 of the Bankruptcy Act, 1914 (replacing s. 47 of the Act of 1883), see *Re Pope*, [1908] 2 K. B. 169; *Re Macdonald*, [1920] 1 K. B. 205.

Evidence. 4. Evidence may be adduced to show that a deed purporting to be voluntary was really made for valuable consideration: Norton on Deeds, 202.

Bankruptcy. 5. A voluntary settlement of any property may be defeated under the Bankruptcy Act, 1914, s. 42 (replacing s. 47 of the Act of 1883), by the subsequent bankruptcy of the settlor within two years of the date of the settlement; or at any time afterwards within ten years from that date

(b) Substitute "settlor" for "husband" throughout the deed.

called the trees), of the other pt. **WHAS** the settlor is **Recitals.**
absolutely entitled to the ppty specified in the schdle hto &

unless it can be proved that the settlement did not leave him insolvent: *Ex p. Hillman*, 10 Ch. D. 622; *Ex p. Todd*, 19 Q. B. D. 186; *Hance v. Harding*, 20 Q. B. D. 732; *Harris v. Tubb*, 42 Ch. D. 79; *Mackintosh v. Pogose*, [1895] 1 Ch. 505; *Re Shrager*, 108 L. T. 346. But a *bonâ fide* purchase from the donee under the voluntary settlement made before the act of bankruptcy to which the title of the trustee in bankruptcy relates back (*Re Carter & Kenderdine*, [1897] 1 Ch. 776) or subsequently thereto without notice (*Re Hart*, [1912] 3 K. B. 6), is good as against the trustee, and the trustees of the settlement are entitled to costs incurred before that date: *Re Holden*, 20 Q. B. D., at p. 45. "Settlement" within the meaning of the Bankruptcy Act means such a conveyance or transfer as contemplates the retention of the property by the donee, either in its original form or in such form that it can be traced, and does not extend to a gift of money even if it is intended to be employed for a particular purpose other than the purchase of a thing to be settled: *Re Plummer*, [1900] 2 Q. B. 790; *Re Branson*, [1914] 3 K. B. 1086. The property must pass from the owner to the trustee; but it is sufficient if the owner declares himself a trustee: *Shrager v. March*, [1908] A. C. 402. Property appointed under a general power in a settlement which is exercised before bankruptcy does not pass to the trustee: *Re Mathieson*, [1927] W. N. 6. As to the effect of bankruptcy on a voluntary settlement of a policy, see *Re Harrison*, [1900] 2 Q. B. 710; *Re Shrager*, *sup.* See Williams on Bankruptcy, 10th ed., 292 *et seq.*

6. A voluntary settlement is not binding on the settlor until completed by actual transfer of the property so far as it is transferable, or by a valid declaration of trust on his part, see notes to *Ellison v. Ellison*, 2 White & T. L. C.; 3 Dav. Prec., 3rd ed., 686; *Re Patrick*, [1891] 1 Ch. 82. A voluntary assignment of a mere expectancy will not be enforced; *Re Ellenborough*, [1903] 1 Ch. 697. A covenant in a voluntary settlement is good at law: see the cases collected, 3 Dav. Prec., 3rd ed., 694, and see *Carter v. Hungerford*, [1917] 1 Ch. 260, at p. 271; *Re Cavendish Browne's Settlement*, 61 Sol. J. 27. **Incomplete settlements.**

7. A voluntary settlement may be set aside on the ground of undue influence over, or want of understanding of its effect by, the donor. Undue influence (1) may consist of actual unfair conduct, coercion, cheating, and generally, though not always, of personal advantage obtained by the donee owing to his confidential relation to the donor, and (2) is generally presumed where the donee stands in a fiduciary relation to the donor: *Allcard v. Skinner*, 36 Ch. D. at p. 181; *Re Coomber*, [1911] 1 Ch. 723. As to the relation of parent and child, see *Powell v. Powell*, [1900] 1 Ch. 243; *Wright v. Carter*, [1903] 1 Ch. 27. A voluntary settlement prepared by a solicitor in favour of himself or a near relative can readily be set aside: *Huguenin v. Baseley*, 14 Ves. 273; and see notes thereto in 1 White and Tudor L. C., and *Lloyd v. Coote & Ball*, [1915] 1 K. B. 242. The first rule applies as between husband and wife: *Bank of Montreal v. Stuart*, [1911] A. C. 120; but see *Western v. Fairbridge*, [1923] 1 K. B. 667; but the second rule does not necessarily do so; *Howes v. Bishop*, [1909] 2 K. B. 390. In a case of the first class the settlement will be upset: in a case of the second class it may be supported if it can be shown that it **Undue influence.**

Title and transfer to trustees. has transferred the same into the names of the trustees to the intent that the same sh^l be held Upon the trusts & with &

Voluntary settlements by young persons.

was not made in consequence of undue influence by the donee : *Re Coomber, sup.* ; and generally that the donor was independently advised. Where a young person proposes to execute a voluntary settlement, the solicitor who acts for him should explain fully to him the nature of the transaction, and should request the settlor, after taking time for consideration, to state in his own words what he wishes to have done ; and should decline to act for him unless the settlement is a proper one : *Powell v. Powell, sup.* ; *Wright v. Carter, sup.* A voluntary settlement unless intended to be self-protective (see *Phillips v. Mullings*, L. R. 7 Ch. 244 ; *Dutton v. Thompson*, 23 Ch. D. 278) should usually contain a power of revocation.

Power of revocation.

8. A power of revocation, though tending to disprove undue influence, &c., has been considered a " badge of fraud " under s. 172 of the L. P. Act, 1925, and could be exercised in favour of the creditors by the trustee in bankruptcy of the settlor under the Bankruptcy Act, 1914, s. 38 : see 3 Dav. Prec., 3rd ed., 679. Care must be taken to ascertain the settlor's wishes as to the insertion or not of a power of revocation ; but the absence of such a power does not render the settlement voidable at the instance of the settlor unless it can be shown that he did not understand the effect of the instrument which he executed. See *Phillips v. Mullings, supra* ; *Hall v. Hall* L. R. 8 Ch. 430 ; *Henry v. Armstrong*, 18 Ch. D. 668 ; *Dutton v. Thompson* 23 Ch. D. 278 ; *James v. Couchman*, 29 Ch. D. 212. In the absence of such a power (if intentionally omitted), the settlor will be irrevocably bound as soon as the transfer of the property is complete : see also *Welman v. Welman*, 15 Ch. D. 570 ; *Paul v. Paul*, 20 Ch. D. 742.

Trust for payment of settlor's debts.

9. In order to make the settlement as far as possible unimpeachable by creditors under the Bankruptcy Act, 1914, s. 42, or otherwise, the first trust is made for payment of any debts owing by the settlor at the date of the deed which may not be otherwise discharged by him in his lifetime or by his estate after his death. As to the effect of this, see *Godfrey v. Poole*, 13 App. Cas. 497. Until the deed has been communicated to a creditor the settlor can revoke the trusts for creditors : *Garrard v. Lauderdale*, 2 Russ. & Myl. 451 ; *Johns v. James*, 8 Ch. D. 744 ; *Re Ashby*, [1892] 1 Q. B. 872 ; *R. v. Humphris*, [1904] 2 K. B. 89 ; unless it be for the benefit of named creditors : *Sharp v. Jackson*, [1899] A. C. 419 ; but on his death it becomes irrevocable : *Synnot v. Simpson*, 5 H. L. Cas. 121 ; *Priestley v. Ellis*, [1897] 1 Ch. 489. As to creditors' deeds, see 2 Encycl. Prec. 216.

Stamps and death duties.

10. Under the Fin. (1909-10) Act, 1910, s. 74, a voluntary settlement is liable to the same *ad valorem* stamp as if it were a conveyance on sale, and, under s. 59 of the same Act, estate duty will become payable in respect of the property settled if the donor dies within 3 years from the date of the deed or, if he retains any interest in the property, from the date of divesting himself of that interest. As to what amounts to retaining an interest, see 1 Norman, 3rd ed., 234 ; *Re Cochrane*, [1906] 2 Ir. R. 200 ; *Att.-Gen. v. Seccombe*, [1911] 2 K. B. 688. As Part V. of the Finance (1909-10) Act, 1910, is by s. 96 (5) to be construed together with the Stamp Act, 1891, section 62 of the latter Act may be applied, and although the property may not be transferred there may be, as in the case of a variation of the trusts of investments already held by the trustees, a transfer of the

subjt to the powers & provons hrinar declared & expressed (c),
NOW THIS DEED WITNESSETH as follows:—

Wit-
nessest.
Trust for
payment
of debts.

1. (i.) THE TREES shl in priority to all other trusts hrin contained raise & pay out of the ppty hby settled such of the debts now owing by the settlor as he is unable to pay out of his ppty not hby settled, & for that ppose may sell any of the ppty hby settled or the ppty for the time being representing the same.

(ii.) A statemt signed by the settlor as to the amt of such debts shl for the protection of the trees be sufft evidence of the amt throf, & in default of & until receipt of such statemt the trees may assume that no such debts exist & may deal with the ppty hby settled accordgly witht being responsible for any loss occasioned thereby.

2. SUBJT to the provons of clause 1 hrof the trees shl, with the consent of the settlor during his life & after his death

reversion to specified stocks upon which stamp duty may be claimed as in a conveyance or transfer on sale. Where, however, property is transferred to the trustees in contemplation of the settlement by transfers stamped with an *ad valorem* stamp of £1 per cent., the settlement requires a 10s. deed stamp, but not an *ad valorem* stamp. But the stamp should be adjudicated. Finance (1909-10) 1910 Act, s. 74 (2).

11. A voluntary settlement containing a power of revocation exercisable by the settlor alone, or disposing of the income of the settled property for a period which cannot exceed six years, is ineffectual to transfer the liability to assessment for income tax or super-tax in reference to the settled property from the settlor to the person benefiting under the settlement. A voluntary settlement made in favour of an infant child (including a step-child or illegitimate child) of the settlor must, in order to relieve the settlor from liability to income tax or super-tax during the minority of the child, be irrevocable or revocable only by the settlor with the consent of some other person or persons and confer on the child an interest for his own or the settlor's life, or, if for a lesser period, must give to the child absolutely the capital of the settled property at the end of the period during which the income thereof is payable to him. For the purposes of this provision a protected life interest is not an interest for less than the life of the child. Finance Act, 1922, s. 20, sub-ss. (1) and (5). See also 67 Sol. J., p. 5.

Income
tax and
super-
tax.

(c) Where the settlor does not desire a power of revocation to be inserted, omit clause 12, and add the following recital: "AND WHAS the settlor has been advised by his solicitor Mr. — of — that it is pper for him to reserve in this deed a power of revocon, & that if such power is not so reserved this deed will, when executed by the settlor, be irrevocable, but the settlor having considered such advice & understanding the same has determined not to reserve such power of revocon."

Recital
where no
power of
revoca-
tion.

at their discreon, *continue trust for investmt & power to vary*, p. 512, f. 2.

Life
interest.

3. (i.) THE TREES shl pay the income of the ppty hby settled & the investmts for the time being representg the same (hrinar called the trust fund), *continue determinable life interest to settlor*, p. 517, f. 8, (i.).

(ii.) *Indemnity to trees*, p. 519, f. 8, (ii.).

(iii.) If & so often as any act or thing determining the life intt of the settlor under the primary protective trust shl be done with the prior consent in writg of the trees within a time to be specified in such consent, or with their subseqt approval in writing given within six calr months after such act, the trees shl hold the sd income accruing after such act Upon the trusts (includg this psnt provon) upon wch the same wd for the time being be held if such act had not been done & the protective trust afsd shl be varied accordgly, Provd that such consent or approval may be given by the trees in their absolute discreon or with the advice of the High Court of Justice.

(iv.) *Provision for cesser of forfeiture*, p. 520, f. 10, (i.).

(v.) *Events in which forfeiture is not to take place*, p. 520, f. 10, (ii.).

(vi.) *Power to settlor to charge income in favour of "any child or chln of the settlor by any wife whom he may marry,"* p. 520, f. 10, (iii.).

Power of
appoint-
ment.

4. AFTER THE death of the settlor the trees shl stand possessed of the capital & future income of the trust fund In trust for all or such one or more exclusively of the others or other of the chln or remoter issue of the settlor by any wife whom he may marry, such chln or issue to take vested interests not later than twenty-one yrs from the death of the settlor, at such age or time or respective ages or times, if more than one, in such shares & with such trusts for their respective benefit & such provons for their respective advancemt (either after the death of the settlor or durg his life with his consent in writg) & maintee & educon at the discreon of the trees or of any other pson or psons as the settlor shl by any deed or deeds revocable or irrevocable or by will or codl appt, And in default of & subjt to any such apptmt In trust for all or any the chln or child of the settlor by any wife whom he may marry, who being male shl attain the age of twenty-one yrs or being

Trust in
default.

female shl attain that age or marry, & if more than one in egl shares.

5. *Hotchpot clause*, p. 525, f. 17.

6. IF THERE shl be no child of the settlor by any wife whom he may marry, *continue ultimate trust*, p. 531, f. 26, saying, "shl stand possessed of the trust fund In trust for the settlor."

Ultimate trust.

7. (i.) THE SETTLOR may by any deed or deeds revocable or irrevocable executed prior to or in contemplon of any marre or by will or codl appt that the income of the whole or any pt of the trust fund shl from & after the death of the settlor be pd to any wife who may survive him durg her life or any less period in such mner & subjt to such condons & restrictions as the settlor may think fit.

Power to appoint life interest to wife (a).

(ii.) The income so apptd shl be pd in priority to all other paymts hrinbfe directed to be made out of the trust fund after the death of the settlor.

[(iii.) The settlor may on making an apptmt under the power lastly hrinbfe contd declare that the power of apptmt in favour of his chln or remoter issue hrinbfe contd shl be exercisable by such wife jointly with the settlor by any deed or deeds revocable or irrevocable And in default of & subjt to any such apptmt by the survor of them the settlor & such wife in like mner or by will or codl & the same shl thenceforth be exercisable accordgly & not orwise.]

8. *Provision as to exercise of settlor's powers after forfeiture*, p. 530, f. 24, *mutatis mutandis*.

9. *Investment clause*, pp. 537 *et seq*.

10. THE TREES may from time to time by mtge or sale of the trust fund or any pt throf raise any moys (not exceeding in the whole the sum of £——) & pay or apply the same to or for the benefit of the settlor in such mner as the trees shl in

Power to trustees to raise gross sum (b).

(a) A settlement not made in contemplation of any particular marriage but containing a power to appoint an interest to any future spouse is not one which the Court can vary on dissolution of the marriage under s. 192 of the Supreme Court of Judicature (C.) Act, 1925: *Hargreaves v. Hargreaves*, [1926] P. 42.

(b) It seems better to give the trustees power to raise the gross sum rather than to allow the settlor to call upon them to raise it out of the trust fund. If the latter course were adopted the object of the settlement might largely be defeated.

their absolute discreon or with the advice of the High Court of Justice think fit.

Power to
appoint
new
trustees.

11. THE POWER of appointg a new tree or new trees hrof shl be vested in the settlor, but if he shl exercise the power of apptmt hrinbfe contd in favour of any wife whom he may marry the same shl thrafter be vested in the settlor & such wife durg their joint lives & in the survor of them durg his or her life.

12. *Power of revocation with restriction on its exercise,* p. 575, f. 4, (i.) & (ii.) (x).

[13. *Apptmt of trust corporation to receive notices,* p. 586, f. 7.]

14. *Interpretation of "trees,"* p. 586, f. 8.

IN WITNESS, &c.

The Schdle above referred to.

XXII.

VOLUNTARY SETTLEMENT of STOCK EXCHANGE SECURITIES by a FATHER in favour of his INFANT CHILDREN to VEST ABSOLUTELY in them at 21 (a).

PARTIES, A., father (hrinar called the settlor), 1; *trees* (hrinar called the trees), 2. WHAS the settlor is absolutely entitled to the investmts specified in the Schedule hrto & is desirous of making such settlemt upon his children H. & K. as is hrinar contained: AND WHAS the sd H. and K. were born resptly on the — day of — & the — day of —: AND WHAS the settlor has transferred the sd investmts into the joint names of the trees to be held by them upon the trusts & with & subjt to the powers & provons hrinar declared & contained concerng the same & applicable thrto.

NOW THIS DEED made in conson of the natural love & affection of the settlor for the sd H. & K. WITNESSETH as follows:—

1. THE TREES may either allow the sd investmts or any of them resptly to remain as now invested so long as the trees

(x) See *post*, p. 639, clause 8, for a form of a power of revocation with the consent of the trustees.

(a) As to avoidance of income and super-tax by a settlor on the income of a fund settled on his infant children, see *ante*, p. 635. See also points 1-10, *ante*, pp. 632 *et seq.*

think fit or may at any time or times at their discretion sell the same or any of them resp'tly & sh'l at the like discretion invest the nett proceeds of sale thro' in or upon any of the investm'ts hrby authorised with power at the like discretion to vary or transfer any such investm'ts for or into others of a nature hrby authorised.

2. THE TREES sh'l hold the sd investm'ts & the investm'ts for the time being representg the same (hrinar togr referred to as the trust fund) IN TRUST for such of them the sd H. & K. as being male sh'l attain the age of 21 yrs or being female sh'l attain that age or marry if more than one in equal shares.

3. THE TREES sh'l apply at their discreon the income of the whole or any pt of the trust fund for or towards the maintnee educon or benefit of the sd H. & K. witht regard to the income of any other fund (b) wch may be available for the same ppose & also witht regard to their respective ages & sh'l invest the surplus income (if any) thro' in any investm'ts hby authorised in augmenton of the capital of the trust fund.

4. THE STATUTORY power of advancemt applicable hrto sh'l not be exercised by the trees witht the consent of the settlor (c) durg his life.

5. *Investmt clause*, pp. 537 *et seq.*

6. *Power to apportion paym'ts*, p. 579, f. 3.

7. *Power for professional tree to charge*, p. 580, f. 6.

8. THE SETTLEMT hrby created sh'l be irrevocable or The settlor may with the consent in writg of the trees (d) (wch consent the trees may give or withhold at their absolute discretion) at any time or times before any object of this settlemt sh'l have attained a vested intt under the trusts hrinbfe declared revoke all or any of the sd trusts but subjt & witht prejudice to any & every exercise by the trees of the power of advancemt applicable hrto.

9. THE POWER of appointg a new tree or new trees hrof sh'l be vested in the settlor durg his life.

10. *Interpretation of trees*, p. 586, f. 8.

IN WITNESS.

Schedule.

(b) Cf. the proviso to s. 31 (1) of the T. Act, 1925.

(c) See s. 32 of the T. Act, 1925.

(d) The giving of their consent to the exercise of the power of revocation may impose a heavy responsibility on the trustees whose duty it is to see to the interests of the children. In most cases it will be better that the settlement should be irrevocable.

XXIII.

DECLARATION of TRUST (*endorsed*) of SUM ADDED to SETTLEMENT (a).

Parties. THIS DECLARATION made, &c., BETW the within-named
 Recitals. A., of the one pt, & the within-named B., C., & D., *trees* (hereinafter
 Transfer of stock. called the trees), of the other pt: WHAS the sum of £——
 2½ p.c. Consold Stk has been transferred by the sd A. to the
 trees (who are the trees of the within-written settlmt), to the
 intent that the same shd be held upon trust as hereinafter decl'd :
 Wit- NOW THIS DEED WITNESSETH that the trees or other
 nesseth. the trees or tree for the time being of the within-written settlmt
 shd stand possd of the sd sum of £—— 2½ p.c. Consold Stk, &
 the investmts for the time being representing the same, & the
 income throug, UPON SUCH TRUSTS & with & subj't to such
 powers & provns as are by the within-written settlmt declared
 of or concerng the within-mentd husbd's [wife's] fortune &
 the income throug, or such of the same trusts, powers, & provns
 as may be subsistg or capable of takg effect, but not so as
 to increase or multiply charges or powers of charging (b), to
 the intent that the fund hereby settld shd be consolidated with,
 & form one fund with the within-mentd husbd's [wife's]
 fortune for all pposes, includg (so far as the sd A. can effect
 that object) the operation & effect of the hotchpot clause in the
 within-written settlmt contained (c). IN WITNESS, &c.

Stamp.
 Short
 form.

(a) Generally as to added funds, see Vaizey, 326. The following is a short form of a memorandum, not under seal, for the same purpose, which would ordinarily suffice. The stamp in either case will be the same; as to which and as to estate duty see *ante*, p. 634, note. "Mem,—I, the within-named A., hereby declare that the sum of £—— — Stk was on the —— day of —— transferred by me into the names of the trees of the within-written settlmt, to the intent that the same shd form an addition to the trust funds thereby settled, & shd thenceforth be held upon the trusts wch wd have been applicable thereto if the same had formed pt of the sum of £—— — Stk origlly settld thereby. As WITNESS my hand this —— day of ——."

(b) As to multiplying charges or powers of charging, where additional funds are settled, see *Re Beaumont*, [1913] 1 Ch. 325.

(c) See *ante*, p. 525, note (b).

XXIV.

DEED *Endorsed on* SETTLEMENT *enlarging Range of* INVESTMENT.

PARTIES, A. & B., his wife, C. & D., *beneficiaries*, 1; K., L. *Parties.*
& M. (hrinar called the trees, weh expression shl include the
trees or tree for the time being of the settlemt hrinar recited), 2.
Recitals showing that the fund is settled in trust for A. for life, *Recitals.*
remainder to B. for life without power of anticipon, remainder
to C. & D., their only chln, who are of age, in equal shares, subjt
to the usual power of apptmt vested in the parents & the
survor, & that K., L. & M. are the present trees of the settlemt.
AND WHAS the pties hto of the first pt are resply desirous
that the range of investmt authorised by the within-written
settlemt with respt to the trust funds thrin comprised shl durg
the lives & life of the sd A. & B. & the survor of them be
enlarged & extended in mner hrinar expressed. NOW THIS
DEED WITNESSETH that for the ppose of carrying the sd
desire into effect & in conson of the premes it is hby agrd as
follows :—

1. THE WITHIN-WRITTEN settlemt shl be read & construed as if
the investmts thereby authorised included, *here state additional*
investmts. Declara-
tion
enlarging
range of
invest-
ment.
2. THE TREES shl not be in anywise responsible or liable for
any loss arisg from any investmt hby authorised.
3. THE SD pties hto of the first pt hby jointly & sevlly
covt with the trees & every & each of them resply that
they, the respective covtg pties & their respective exs & ads
will at all times hrafter keep the trees & their respective exs
& ads, estes & effects indemnified & saved harmless from &
against all claims, demands, actions, suits, proceedings, liability,
costs, damages & expses by reason or in respt of making or
retaining any investmt hby authorised. Covenant
of indem-
nity (a).
4. THE SD A. hby charges all his psnt & future life intt Charge.

(a) Every new trustee should on appointment require the beneficiaries to enter into a separate covenant of indemnity with him personally in respect of the same matters. For a form of indemnity to trustees in respect of an unauthorised investment which has already been made, see Vol. I., Prec. VI., p. 773.

in the trust funds settled by the within-written settlmt, And the sd C. & D. hby resply charge all their respective reversionary shares & intts (whether under any apptmt or in default of apptmt) in the same trust funds with the indemnity of the trees & their respective exs & ads, estes & effects, in respt of the matters afsd & with the paymt of any sum or sums wch may become payable to them or any of them resply in respt of such indemnity under the covt.hrinbfe contd.

IN WITNESS, &c.

XXV.

DECLARATION of TRUST of MONEY SUBSCRIBED for the WIDOW and FAMILY of a MAN killed by an ACCIDENT (b).

Parties.	<i>PARTIES</i> , A., of, &c., & B., of, &c. (hrinar called the trees),
Recitals.	of the one pt, & C., of, &c., of the other pt: WHAS there is
Consols purchased with sub- scriptions.	now standg in the names of the trees the sum of £—— 2½ p.c. Consolidated Stk, arisg from the investmt of moys raised by subscription for the benefit of the sd C., the widow & the chln of X., late a porter in the service of the —— Rly Co., who was killed by an accident while in their employ on the —— day of ——: NOW IT IS HBY AGRD & declared betn & by the trees & the sd C. that the trees shl henceforth stand possed of the sd sum of £—— 2½ p.c. Consolidated Stk & the income throf (hrinar called the trust fund): Upon the trusts & subjt to the powers & provons hrinar declared concerng the same, that is to say:—
Declara- tion of trust.	

As to income.	1. DURG THE life of the sd C. & twenty-one yrs after her death (c) the trees shl in their absolute discron from time to time pay & apply the income of the trust fund, or of so much throf as
------------------	--

(b) The presumption is that this declaration represents the wishes of the contributors, see *Att.-Gen. v. Clapham*, 4 De G. M. & G., at p. 626; *Att.-Gen. v. Mathieson*, [1907] 2 Ch. 383; *Re Orphan Working School and Alexandra Orphanage's Contract*, [1912] 2 Ch. 167.

As to the stamp on this deed, see *ante*, p. 634, note.

(c) The discretionary trust could, if desired, be continued till the death of the last survivor of C. and her existing children.

shl not have been sold or disposed of as next hrinar mentd, to or for the benefit of the sd C. & her chln or child by the sd X. for the time being in existce, or any one or more of such objects of this trust to the exclusion of the others or other of them.

2. DURG THE period afsd the trees shl in the like discron Capital.
from time to time sell & dispose of all or any pt of the capl of the trust fund, & pay or apply the moys arisg therefrom to or for the maintce, support, advancemt, or benefit of the sd C., & her sd chln or child, or any one or more exclusively of the others or other of them, as the trees shl think pper.

3. SUBJT TO the discretionary trust hrinbfe contd the trees Ultimate
shl stand possed of the trust fund & the income throf In trust trust (a).
for the sd C. absolutely.

4. Interpretation of "trees," p. 586, f. 8.

IN WITNESS, &c.

(a) In the absence of an ultimate trust declared, there would seem to be a resulting trust of the balance for the donors: *Re Abbott Fund*, [1900] 2 Ch. 326, distributable rateably in proportion to their subscription: *Re British Red Cross Balkan Fund*, [1914] 2 Ch. 419; but if the fund had been subscribed to a Society so as to become its absolute property and prevent there being any resulting trust, then, unless the trusts were charitable, (as to which, see Tyssen's Charitable Bequests, 2nd ed., 202; *Re Welsh Hospital (Netley) Fund*, 1921, 1 Ch. 655), the balance would belong to the Crown as *bona vacantia*: *Braithwaite v. Att.-Gen.*, [1909] 1 Ch. 510. The Crown would, however, have no claim to the balance of a fund where the contributors for the time being had been the objects of the trust: *Re Customs and Excise Officers' Mutual Guarantee Fund*, [1917] 2 Ch. 18.

SETTLEMENTS (REAL).

PRELIMINARY NOTE.

The provisions of the S. L. Act, 1925, so far as they affect the title to settled land have been discussed (Vol. I., pp. 581 *et seq.*).

In the present note it is intended to refer shortly to the requirements of the S. L. Act, 1925, in connection with the settlement of land and to draw attention to those provisions of the S. L. Act, 1925, and the L. P. Act, 1925, as respectively amended by the L. P. (Amendment) Act, 1926, which concern those matters which by s. 4 of the former Act are assigned to the trust instrument.

Autho-
rised
method
of settl-
ing land
inter
vivos.

The mode of effecting a strict settlement of land is prescribed by the S. L. Act, 1925, s. 4 (1), in the following terms: "Every settlement of a legal estate in land *inter vivos* shall, save as in this Act otherwise provided, be effected by two deeds, namely, a vesting deed and a trust instrument, and if effected in any other way shall not operate to transfer or create a legal estate."

The words "save as in this Act otherwise provided" refer apparently to the provision of s. 12 enabling a vesting order to be substituted in certain cases for a vesting deed. There appears to be no other saving, so that, with the one exception alluded to, the sections must be taken as applying generally to every settlement of a legal estate in land.

By s. 117 (1) (xxx1) "vesting deed" in relation to settled land means the instrument whereby settled land is conveyed to or vested or declared to be vested in a tenant for life or statutory owner; and "trust instrument" means the instrument whereby the trusts of the settled land are declared, and includes any two or more such instruments and a settlement or instrument which is deemed to be a trust instrument. From these definitions it appears that while, on the one hand, one trust instrument may follow upon another so as to constitute a compound settlement (s. 1) which will be deemed to subsist (s. 3) so long as any limitation, charge or power of charging thereunder subsists or is capable of being exercised, it is contemplated, on the other hand, that only one principal vesting deed, as defined in s. 5, will continue to operate and be effective so far as regards the land comprised therein at one and the same time. It seems safe, therefore, to paraphrase the expression "every settlement of a legal estate" to mean every settlement of land to which s. 1 of the Act (as amended by the L. P. (Amendment) Act, 1926) applies, the legal estate in which is not already subject to a settlement; with the result that neither a resettlement made at a time when any limitation charge or power of charging remains subsisting under the original settlement, nor any derivative settlement until the determination of the original settlement (see s. 17) is within the purview of the section.

There appears to be no objection to the execution of several vesting

deeds each relating to different parcels of the settled land. Cf. *Re Clayton's* S. E., [1926] Ch. 279.

The vesting deed must convey the land (s. 4 (2)) to the tenant for life or statutory owner (if more than one as joint tenants) for the legal estate the subject of the intended settlement, or if the legal estate is already vested in the tenant for life or statutory owner, must declare that the land is vested in him for that estate. It must (s. 5 (1)) contain the following statements and particulars which may be incorporated by reference to an existing vesting instrument but not by reference to a trust instrument nor by reference to a disentailing deed, that is to say—

- (a) A description either specific or general of the settled land.
- (b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land.
- (c) The names of the persons who are the trustees of the settlement.
- (d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life.
- (e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.

It is to be observed that the form of vesting deed (First Schedule, Form No. 2) supplied by and (s. 15) framed in accordance with the provisions of the Act, is without recitals of any kind. As the function of the vesting deed is to disclose only such matters as are essential to make title to the property the subject of the settlement, it is obvious that the only recitals which can usefully be inserted in the vesting deed of an original settlement are such recitals of title as may be necessary or desirable for the purpose of explaining the schedules (see *infra*, pp. 694, 697, Prees. II. and IV.).

Section 4 (3) of the S. L. Act, 1925, enacts that the trust instrument shall—

- (a) Declare the trusts affecting the settled land.
- (b) Appoint or constitute trustees of the settlement.
- (c) Contain the power, if any, to appoint new trustees of the settlement.
- (d) Set out either expressly or by reference any powers intended to be conferred by the settlement in extension of those conferred by this Act.
- (e) Bear any *ad valorem* stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement.

The trusts for giving effect to what are termed the beneficial provisions of the settlement may be framed on much the same lines as were the uses usually limited for giving effect to those provisions in a settlement made before 1926.

The following are the principal points of difference which may occur:—

If reference be made to the form of trust instrument (First Schedule, Form No. 3) supplied by and (s. 15) framed in accordance with the provisions of the Act, it will be seen that the ultimate trust is in favour of the settlor in fee simple. The suggestion seems to be that if leasehold property is to be included in the settlement it is more properly included by way of referential trust in accordance with the former practice. This may be the case, if as in the same form the practice is adhered to of limiting terms to trustees for securing portions for younger children and other capital or annual sums. In the present collection of forms and precedents the plan adopted is to declare direct trusts in relation to all the freehold together with the leasehold property, if any, comprised in the vesting deed and to

The vesting deed.

The trust instrument.

Declaration of trusts.

resort to referential trusts only in the case of personal property and chattels, a description of which is not required to be included in the vesting deed. This is rendered possible by the provisions discussed *infra* of s. 130 of the L. P. Act, 1925, which enable entailed interests to be created in any property real or personal. It is undoubtedly permissible and very convenient, and will avoid any possible danger, which there may be in employing a trust by reference, of failing to create an entailed interest (see L. P. Act, 1925, s. 130 (2)). Accordingly the expression "the settled land" defined so as to include the freehold and leasehold property originally comprised in the settlement will be found to take the place in the following forms of the expression "the settled freeholds" which in earlier editions was defined to include the freehold property only.

Terms of
years for
securing
charges.

The trusts of "the settled land" do not include any trust in favour of the trustees of the settlement of any term of years for securing portions or otherwise, such as is to be found in Form No. 3 in the First Schedule to the Act. The limitation of long terms of years in favour of the trustees of the settlement for securing portions and other capital and annual sums which fitted in well enough in theory with the old conception of a strict settlement, invested the trustees at the proper time with the legal right to the rents and profits and with power to deal with what for all practical purposes was the corpus of the settled land for the purpose of executing the trusts for which the terms were limited. Trusts of the surplus rents and profits were necessarily inserted in each case. The declaration of a trust for a long term of years contained in a trust instrument in favour of the trustees of a settlement does not fit in with the modern conception of a settlement. S. 16 of the S. L. Act, after making provision for the enforcement of equitable interests and powers against the estate owner, provides (sub-s. 5) that save as in that section expressly provided no legal estate shall, so long as the settlement is subsisting be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement. A limitation by way of trust of a term in favour of the trustees does not therefore invest them at any time with any legal right to the rents and profits nor with any power to deal at any time with the settled land such as would enable them to raise any money which the term is intended to secure. The tenant for life is bound, no doubt, to raise the money as and when required, and he may create a legal term by way of mortgage for that purpose; but this would be so whatever were the form of the trust under which the money were required to be raised (*cf.* the form, *post*, p. 662). It is difficult in the circumstances to escape from the conclusion that the limitation of a term with its attendant trusts (including trusts of the surplus rents and profits) is not the most appropriate form of trust that can be devised to meet the requirements of the case. Moreover a term of 800 or 1000 years cannot conveniently be limited out of terms of 99 years or less for which the leaseholds, if any, comprised in the settlement may conceivably be held.

Entailed
interests
in real
and
personal
property.

Section 130 of the L. P. Act, 1925, by enabling entailed interests to be created in real and personal property, has very considerably simplified as well as shortened the trusts which are necessary to effect the settlement with real estate of leasehold and other personal property.

The section (sub-s. 1) provides that an entailed interest, meaning an interest in tail or in tail male or in tail female or in tail special, may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before 1926 a similar estate tail could

have been created by deed (not being an executory instrument) in freehold land; the same sub-section further provides that personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied and otherwise dealt with as if the same were capital money or securities representing capital money arising under the S. L. Act, 1925, from land settled on the like trusts. It is also provided (sub-s. 3) that where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after 1925, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which either before or after the commencement of the Act an entailed interest has been created, and is subsisting, such directions shall be deemed sufficient to create a corresponding entailed interest in such personal estate. Further provisions relating to the settlement, by reference, of money or securities or the proceeds of sale of any property are contained in s. 78 of the S. L. Act, 1925. This section has a wider operation than that of s. 130 of the L. P. Act, 1925, and some of its provisions, notably those contained in sub-ss. (2) and (5) seem to overlap those of s. 130. These are further discussed, *post*, p. 681.

Before 1926 neither leasehold nor any other kind of personal property could be entailed. If it were desired that leaseholds or personal chattels should be held and enjoyed along with entailed estates, the plan adopted was to assign the property to trustees to be held by them upon trusts corresponding as nearly as possible to the uses limited in respect of the settled freeholds but subject to provisions of some length designed to prevent the property assigned from vesting in the first tenant in tail at birth. Money and securities for money intended to swell the settled estates were made subject to a trust for investment in the purchase of land to be settled to the uses of the settlement so as to become notionally converted into land. In the case of copyholds in which there was no custom to entail and sometimes in the case of leaseholds the complex procedure was followed of notionally converting the property into money by means of an imperative trust for sale and notionally converting it back again into land by means of a trust for investment of the proceeds to arise from the sale in the purchase of land to be settled to the uses of the settlement. By the combined effect of the L. P. Act, 1925, s. 130, and the S. L. Act, 1925, ss. 75 to 81, which provide for the destination of capital money arising under the Act as well as of capital money arising otherwise than under the Act, the doctrine of notional conversion of land into money and of money into land with its attendant pitfalls may for all practical purposes be disregarded. Property other than that described in the vesting deed can be settled by reference in a few words (see the forms, *post*, pp. 681 *et seq.*); and the primary trusts for the investment of capital money and money directed to be applied as capital money in the purchase of land with the numerous directions for the application of money arising in various circumstances which in a settlement made before 1926 were necessarily scattered about the deed, will in future be omitted in reliance upon the Act.

Neither an infant nor a person contingently entitled is within the definition of a tenant for life or of a person having the powers of a tenant for life contained in ss. 19 and 20 of the Act. Where neither section applies the powers of a tenant for life are conferred (s. 23) upon any person of full age on whom such powers are by the settlement expressed to be conferred; and if there are none then upon the trustees of the settlement as statutory owners (s. 117 (1) (xxvi)). Power to enter into possession of the settled

Notional
conver-
sion.

Trusts
by refer-
ence.

Trusts
of capital
money.

Minority
clause.

land during a minority or pending a contingency is given by s. 102 to the trustees appointed for this purpose by the settlement or failing any such person then to the trustees of the settlement with all necessary powers of management. The last-mentioned section, coupled with s. 31 of the Trustee Act, 1925, conferring the necessary powers of maintenance with directions for the accumulations of surplus income and provisions relating to the destination of such accumulations renders unnecessary the insertion of any such clause as was formerly inserted for the purpose of supplementing the statutory powers in this behalf.

Appoint-
ment of
trustees.

The trust instrument must appoint or constitute trustees of the settlement. This means, in the case of a new settlement, trustees of the settlement of the legal estate in land effected by the principal vesting deed and trust instrument. A settlement is deemed to subsist (s. 3) so long as any charge or power of charging under the settlement subsists. Where, therefore, a trust instrument by way of resettlement is made during the subsistence of any charge or power of charging under an existing trust instrument the two trust instruments will constitute a compound settlement of which the trustees of the original settlement will be the trustees (ss. 1 (1) and 31 (1)). Trustees must nevertheless in this case be appointed of the resettlement of equitable interests effected by the later trust instruments. The trustees so appointed will not supersede the trustees for the purposes of the Act of the original settlement; but if at any time there are no such trustees the trustees of the resettlement under which there is a tenant for life or statutory owner will by virtue of the minor amendment to the S. L. Act, s. 31, contained in the L. P. (Amendment) Act, 1926, become the trustees of the compound settlement. In such a case apparently s. 35 (2) of the Trustee Act, 1925, and s. 35 (1) of the S. L. Act, 1925, will apply; and accordingly a memorandum of the names and addresses of the trustees so appointed must be endorsed or annexed to the principal vesting deed under the former Act, and a deed of declaration executed, and a memorandum thereof endorsed or annexed to the principal vesting deed under the S. L. Act. It is apprehended that the last-mentioned section, which is expressed to apply whenever a new trustee for the purposes of the Act is appointed of a trust instrument, can have no application to the case of an appointment of a new trustee made under the later of the two trust instruments for the time being constituting a compound settlement while there are trustees for the purposes of the S. L. Act of the earlier trust instrument. So soon as all equitable interests and powers under the earlier of the two trust instruments have ceased and determined it is contemplated apparently that a deed of discharge shall be executed by the trustees of that trust instrument under s. 17 of the Act and a vesting deed executed containing the particulars required by s. 5 of the Act.

Trustees
clauses.

Part VI. of the Act contains certain general provisions as to trustees. Section 94 provides that capital money arising under the Act shall not be paid to fewer than two persons as trustees of a settlement, unless the trustee is a trust corporation (see s. 117 (1) (xxx) and L. P. (Amendment) Act, 1926, s. 3). Section 95, which applies to trustees appointed by the Court under s. 34 (see *Cookes v. Cookes*, 34 Ch. D. 498), makes the receipt of the trustees, or of a trust corporation being the sole trustee, or of the personal representatives of the last surviving or continuing trustee an effectual discharge for any money or securities paid or transferred to them or by their direction. Sections 97 to 99 contain full provisions for the protection individually, generally and in particular cases and for the reim-

bursment of the trustees; and s. 93 gives power to the Court to determine any question arising or doubt entertained respecting the exercise or intended exercise of any of the powers of the Act or settlement, as to the person in whose power a vesting deed or assent ought to be executed or as to the contents thereof, or otherwise in relation to property subject to a settlement.

The powers which a tenant for life could exercise over the settled land under the S. L. Acts, 1882-1890, have been so far extended by the S. L. Act, 1925, as to include most of the additional powers which it had become the general practice to insert in settlements made before 1926. See as to the power of sale: S. L. Act, 1925, ss. 38, 39, 49-51, discussed, Vol. I., pp. 587, 588; and compare 2 K. & E., 11th ed., pp. 771 *et seq.*; as to the power of leasing: S. L. Act, 1925, ss. 41-48, discussed, Vol. I., pp. 830 *et seq.*; and compare 1 K. & E., 11th ed., pp. 776 *et seq.*; as to the power of accepting surrenders of leases: S. L. Act, 1925, s. 52, discussed, Vol. I., p. 1026; and compare 2 K. & E., 11th ed., p. 777; and as to the power of mortgaging: S. L. Act, 1925, s. 71, discussed, Vol. II., pp. 107, 108; and compare 2 K. & E., 11th ed., pp. 782 *et seq.* The S. L. Act, s. 4, requires any powers intended to be conferred by the settlement in extension of those conferred by the Act to be set out either expressly or by reference in the trust instrument. Where occasion requires such additional powers must of course be inserted (see the forms, *post*, pp. 677 *et seq.*); but having regard to the extensive powers conferred by the Act it will seldom be necessary to resort to express powers.

Powers
of tenant
for life.

Although the powers conferred upon a tenant for life by the Act cannot in general be excluded (see *infra*), some few of the powers given by the Act, as for instance the power to sell the principal mansion-house, are expressly conferred subject to any contrary intention in the settlement. Provision must therefore be made in the settlement expressly negating any such powers where that is the intention.

As to the investment of capital money, see *post*, pp. 684 *et seq.*

Section 106 of the Act contains provisions invalidating any prohibition, clause of forfeiture, or other provision in a settlement purporting or tending to prevent the exercise by a tenant for life of his powers under the Act, or his right to require the settled land to be vested in him, which cannot therefore be excluded or controlled by the settlement; *Re Ames*, [1893] 2 Ch. 479; *Re Freme*, 56 Sol. J., 362. So a condition imposing residence on the tenant for life does not affect his power of sale or apparently his other powers under the Act, but remains effectual until the power is exercised: *Re Paget*, 30 Ch. D. 161; *Re Haynes*, 37 Ch. D. 306; *Re Trenchard*, [1902] 1 Ch. 378; *Re Richardson*, [1904] 2 Ch. 777. As to the powers under the Acts of a person who has an option to reside, see *Re Anderson*, [1920] 1 Ch. 175; *Re Gibbons*, *ibid.*, 372. Limitations or trusts over on bankruptcy, &c., are not affected by these provisions, but the powers of a tenant for life exercisable under s. 20 of the Act in respect of a determinable life interest will of course cease on the determination by forfeiture of that interest; and if the land remains settled land he is bound (s. 7 (4)) to convey it to the person who under the trust instrument or by virtue of the Act becomes the tenant for life or statutory owner, and if more than one, as joint tenants. The legal estate in settled land will not vest in the trustee in bankruptcy of an estate owner unless and until the latter becomes absolutely and beneficially entitled to the settled land free from all limitations, powers and charges taking effect under the settlement (s. 103).

Act can-
not be
excluded.

By s. 109 of the Act, nothing in the Act is to preclude a settlor from As to con-

ferring
addi-
tional
powers by
settle-
ment.

conferring on the tenant for life or, save as provided by s. 108, on the trustees of the settlement any powers additional to or larger than those conferred by the Act; and any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in the Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by the Act, and if relating to the settled land, as if they were conferred by the Act on the tenant for life. The omission of the words "unless a contrary intention is expressed in the settlement" contained in the corresponding section of the Act of 1882, render unnecessary any express declaration in the settlement negating any such contrary intention.

Powers
given to
trustees.

Section 108 of the Act, while saving powers exercisable by the tenant for life other than those conferred by the Act, and declaring the powers given by the Act to be cumulative provides (sub-s. (2)) that, notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the settled land thereby conferred on the trustees of the settlement or other persons exercisable for any purpose, whether or not provided for in the Act, shall, after the commencement of the Act, be exercisable by the tenant for life or statutory owner as if it were an additional power conferred on the tenant for life within s. 109, and not otherwise.

In *Re Cowley S. E.*, [1926] Ch. 725, it was held in the case of a compound settlement subsisting at the commencement of the Act that the effect of s. 109 coupled with the provision in s. 1 (1) that where land is the subject of a compound settlement references in the Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires, was to enable the tenant for life of the compound settlement to exercise in relation to the settled land the subject of the compound settlement, any additional powers conferred by the later settlement on "the person or persons for the time being entitled to a life tenant's powers under the Settled Land Acts." *Sed quære* whether "the settlor," "the settlement" and the "settled land" in that section are not necessarily correlative terms.

Regis-
tered
land.

For a form of vesting transfer on the settlement of registered land, see *Prec. V.*, *post*, p. 698.

TRUST INSTRUMENTS.

RECITALS (a).

1. WHAS a marre is intd shortly to be solemnised betn the husbd & wife. Intended marriage.

2. WHAS BY a deed (hrinar called the Vestg Deed) bearing even date with but executed contemporaneously with these psnts & made betn the same parties & in the same order as these psnts certain freehd [& leasehd] ppty situate at — in the Coy of — was vested in the husbd upon the trusts declared concerng the same by a trust instrumt of even date thrin referred to (meaning these presents). Vesting deed of even date.

3. WHAS AT the date of the disentailg deed hrinar recited & under or by virtue of an indre dated, &c., & made, &c., being or now constitutg the trust instrumt of a settlmt made on the marre of the sd A. & K. [&] a vestg deed dated, &c., & made, &c., being the vestg deed executed for givg effect to the requirements of the Settled Land Act, 1925, in relation to the sd settlmt [& a subsidiary vestg deed dated, &c., & made, &c., or “the subsidiary vestg deeds mentd in the Sched hto”] certain freehd ppty situate at — in the coy of — had become vested in the sd A. upon the trusts follg, that is to say, upon trust for the paymt throuth of the annl sum of £—— by way of pin-moy to the sd K. durg the joint lives of herself & the sd A. & subjt thrtu upon trust for the sd A. durg his life witht impeachmt of waste & from & after his death upon trusts for securg paymt throuth to the sd K. durg her life of a yearly rentcharge of £—— & upon further trust for securg for the portions of the younger child or chln of the sd marre, but subjt to the paymt of such rentcharge, paymt of the sum of £—— if there shd be but one such younger child & of the sum of £—— if there shd be two or more such younger chln & subjt & charged as afsd upon trust for the sd B. in tail male with remainders over. Trusts subsisting at date of disentailing deed under settlement made before 1926.

4. WHAS AT the date of the disentailg deed hrinar recited & under or by virtue of a settlmt (hrinar called the original The same under

(a) For recitals of title to personal property belonging absolutely to the husband or wife and intended to be brought into settlement, see *ante*, pp. 501 *et seq.*

settle-
ment
made
after
1925.

settlemt) being a settlemt made on the marre of the sd A. & K. effected by a vestg deed & trust instrumt respdy dated the — day of — 19 , & made, the sd vesting deed betn, &c., & the sd trust instrumt betn, &c., & by virtue also of a subsidiary vestg deed dated, &c., or “ the subsidiary vestg deeds mentd in the Sched hto ” certain freehd & leasehd ppty had become vested in the sd A. upon the trusts follg, that is to say, upon trust *continue recital of subsistg trusts as in f. 3.*

Dis-
entailing
deed.

5. WHAS BY a disentailg deed dated, &c., & made, &c., all the freehd [& leasehd] ppty & investmts representg capital moy then subjt to the trusts of the original settlemt in wch the sd *tenant in tail* then had an entailed intt thrunder were grted, assned & disposed of by the sd A. and the sd *tenant in tail* with the consent of the sd A. to the sd — & — subjt to the estes intts & charges prior to & the powers overreachg the entailed intt of the sd *tenant in tail* in the sd respve premes other than the life intt of the sd A. thrin but discharged from all entailed intts of the sd *tenant in tail* under the original settlemt & from all estes, rights, intts, & powers, to take effect after the determinon or in defeasance of such entailed intts upon such trusts & subjt to such powers & provons as the sd A. & *tenant in tail* shd at any time or times thrar by any deed or deeds revocable or irrevocable jointly appt. AND in default of & subjt to any such apptmt upon the trusts & subjt to the powers & provons wch under or by virtue of the original settlemt were subsistg or capable of takg effect in or over the same premes immedy before the exon throf & so as to restore & confirm the same trusts, powers, & provons (b).

Particu-
lars of
disen-
tail'd
capital
money.

6. AND WHAS particulars of the investmts representg capital moy subjt to the trusts of the original settlemt & disentailed as afsd & now standing in the names of the trees are contd in the schdle hto.

Effect
of settle-
ment
and dis-
entailing
deed.

7. WHAS BY the effect of a settlemt effected by the vestg deed & trust instrumt respdy nod — & — in the first column of the Schdle hto, of the subsidiary vestg deed[s] [respdy] nod,

(b) See S. L. Act, 1925, s. 22 (1), which provides that where by a disentailing assurance settled land is expressed to be limited (whether subject or not to any estates, interests, charges or powers expressly created or conferred thereby) upon the trusts subsisting immediately before the execution thereof, a person entitled to any estate or interest under the previously subsisting trusts becomes entitled thereto as of his former estate or interest.

&c., in the sd Schdle, of the disentailg deed nod — in the same Schdle & of certain deeds, events, matters, & things, recited in the sd deeds or some or one of them & of the exercise of certain powers contd in the sd settlemt certain freehd [& leasehd] ppty situate at — in the coy of — has now become vested, subjt to the intts & charges prior to & the powers overreachg the entailed intt of the sd *tenant in tail* under the sd settlemt, in the sd *tenant for life* upon such trusts & subjt to such powers & provons as the sd *tenant for life & tenant in tail* shl at any time or times hrar by any deed or deeds revocable or irrevocable jointly appt.

8. AND WHAS under or by virtue of the recited settlemt & vesting deed & by the effect of the sd disentailg deed certain leasehd ppty has become vested in the sd *tenant for life* upon & subjt to the trusts powers & provons upon & subjt to wch the sd freehd ppty was held immedy before the exon of the sd disentailg deed & wch preceded the entailed intt of the sd *tenant in tail* under the sd settlemt & subjt thrtto in trust for the sd *tenant in tail* absolutely.

Title to
leaseholds
settled
before
1926 (c).

9. AND WHAS the investmts specified in the schdle hrto & representg capital moy arising from ppty subjt to the trusts of the sd settlemt are now standg in the names of the trees upon the trusts by virtue of the sd settlemt & disentailg deed now subsistg in regard to the sd freehd ppty.

Title to
capital
money.

10. AND WHAS there has been issue of the marre of the sd A. & B. — chln only, viz., the sd —, the eldest son, & — younger chln, — of whom have attained their respective ages of twenty-one yrs, & the remaing — are still infants & unmarried.

State of
family.

11. AND WHAS upon the treaty for the intended marre it was agrd that all the same premes shd be settled by the husband in mner hrinar appearing.

Agree-
ment for
settle-
ment on
marriage.

12. AND WHAS the sd, *father, & son*, have agrd to make such settlemt as is hrinar contained of all the sd freehd [& leasehd] ppty & investmts now subjt to their joint power of apptmt [& also of the sd psonal chattels & effects.]

Agree-
ment for
resettle-
ment.

(c) Where leaseholds are settled by a settlement made after 1925 they will be entailed along with the freeholds.

INTRODUCTORY CLAUSES.

A. NOW THIS DEED made in conson of the intended marre [or “ the premes ”] WITNESSETH as follows :—

Trust
until
marriage.

[1. The husbd shl hold the freehd [& leasehd] ppty comprised in the vestg deed IN TRUST for himself until the intended marre.]

Defini-
tions.

2. In this Trust Instrumt, unless the context orwise requires, the followg expressions shl bear the meang hrinar assned to them resply, that is to say :—

(a) “ The settlemt ” means the settlemt effected by the vestg deed & this trust instrumt.

(b) “ The settled land ” means & includes the freehd [& leasehd] ppty comprised in the vestg deed.

(c) “ The tenant for life ” means the [husbd or “ the sd A ” or other the] tenant for life or staty owner of the settled land within the meang of the Settled Land Act, 1925.

(d) “ Younger child or chln ” means any child or chln who being male shl attain the age of twenty-one years or being female shl attain that age or marry other than (a) any son or sons who bfe his or their resply attaing the age of twenty-one years shl [or any daur or daurs who bfe her or their resply attaing that age or marryg shl (b)] or wd if of full age be or become indefeasibly (c) entitled whether in posson or remr under or by

(a) If there is a name and arms clause in the settlement or a shifting clause carrying over the estate on succession to another estate, care must be taken that a child becoming entitled to the estate shall be excluded from taking a portion in spite of his or her interest being defeasible from either of such clauses. This may be effected by the following variation :

“ Other than any son or sons who bfe attaing the age of twenty-one years, or any daur or daurs who bfe attaing that age or marryg shl be or if of full age wd be or become entitled under or by virtue of these prnts to the first [life or] entailed interest in the settled land wch shl not be liable to be defeated orwise than by the effect of the provon hrinbfe contained requirg the owner in posson of such interest to assume & use the name & sums of — ” or “ the provon hrinbfe contd determng the intt of such owner on his or her becomg entitled to the sd X este.”

(b) The words in this bracket will only be required where the daughters take successively in tail.

(c) The word “ indefeasibly ” should be inserted where there is an over-

virtue of these prsnts to the first [life or] entailed intt in the settled land.

3. The tenant for life shl [after the solemnisation of the intended marre] hold the settled land upon the trusts & with & subjt to the powers & provons hrinar declared concerng the same, that is to say :—

B. NOW THIS DEED made in psuance of the sd agrmt & in conson of the premes WITNESSETH as follows :—

Trusts
after
marriage.

1. THE SD, *father, & son, as settlors*, in exercise of the power vested in them by the sd disentalg deed of, &c., & of every other power enabling them or either of them in this behalf hby appt & direct & each of them hby appts & directs that all & singr the freehd [& leasehd] ppty comprd in the sd ppal [& subsidiary] vesting deeds & now subjt to the joint power of apptmt vested in the sd *father & son*, as afsd (d) [& all other (if any) the freehd & leasehd ppty so subjt situate or arisg in the respve parishes of — & — in the coy of —] (all of wch freehd [& leasehd] ppty is hrinar called the settled land) shl but subjt to the trusts, intts & powers subsistg in the same premes under or by virtue of the original settlemt & wch immedly preceded the entailed intt of the sd — thrin, other than the trust in favour of the sd A. durg his lifetime, & subjt also to the powers annexed to or exsble durg the continuance of such prior trusts resply (other than as afsd) & to the trust estes & intts declared or created or to be declared or created in exse of such powers, henceforth go remain & be held upon the trusts & subjt to the powers & provons hrinar declared concerng the same that is to say.

riding power of appointment or where daughters take succesively in tail. See Elph. Introd., 7th ed., p. 448. As to the effect of a younger child succeeding to the estate, see Norton on Deeds, 430; *Re Stawell*, [1909] 1 Ch. 534; reversed, [1909] 2 Ch. 239; *Re Beresford's Settlement*, [1914] 1 R. 222.

(d) If the property comprises leaseholds settled before 1926 upon trusts to correspond with the freeholds, and by the effect of the disentailing deed the reversionary interest in the leaseholds expectant on the death of the father has become vested absolutely in the son (see *Re Fowler*, [1917] 2 Ch. 307) add here “or orwise subject to their joint power of disposition”; and after the words “remain & be held” add “discharged as to the said leasehold ppty from the life and reversionary interests of the *father & son* thrin resply.”

BENEFICIAL PROVISIONS.

Joint
power of
appoint-
ment to
father
and son.
Limita-
tion of
a life
interest.

1. UPON SUCH TRUSTS, & with & subj't to such powers & provons as the sd, *father*, &, *son*, shl from time to time by any deed or deeds, revocable or irrevocable, jointly appt: AND IN DEFAULT of & subj't to any such apptmt,

2. IN TRUST FOR the husbd [the sd A] & his assns durg his life [witht impeachmt of waste (a)] (b), & from & after his death.

Restric-
tion as to
waste.

(a) In the absence of these words a tenant for life is not liable for permissive waste: *Re Cartwright*, 41 Ch. D. 532; and see Goodeve, R. P., 5th ed., 135; 52 Sol. J. 149. If desired, add here, "other than wilful or permissive waste in pullg down houses or bldgs, or sufferg the same to go to decay, & except waste in cuttg timber planted or left standg for ornamt or shelter, or any timber or timber-like trees, orwise than in a due & pper course of managemt [& with the consent in writg of the trees, wech consent it shl be wholly in their discrion to give or withhold witht incurrg any responsibility in that behalf]." In the subsequent limitations without impeachment of waste, add, "save as afsd."

Provision
as to
mines.

For a mining estate the following may be added if so intended: "& so that he & they shl have full liberty to open, work, get, & dispose of all or any of the mines & minerals hby settled, & to exercise & use all such powers, rights, & means for that ppose as might be conferred on a lessee of the sd mines & minerals."

Where there are several life interests they may be declared to be without impeachment of waste by a separate clause.

Law of
waste.

As to the law of waste, see Goodeve, R. P., 5th ed., 135; Bewes on Waste; Vaizey on Settlements; Tudor's L. C. Conv., notes to *Lewis Bowles' Case*; L. P. Act, 1925, s. 135, as to equitable waste. The S. L. Act, 1925, s. 66, enables a tenant for life impeachable for waste in respect of timber with the consent of the trustees or the Court to cut and sell timber ripe and fit for cutting, and to retain one-fourth of the proceeds as rents and profits, the other three-fourths being set aside as capital. Section 47 of the same Act

(b) Where the powers annexed to the life interest in a prior settlement are to be kept on foot, insert here, "in restoron & by way of confirmon of the life interest of the sd —, limited to him by the sd settlemt."

This clause will have effect according to its tenor to keep alive the powers incident to the life interest under the original settlement and will not prevent the exercise by the tenant for life of all such further powers as he could have exercised by virtue of the resettlement, if his interest under the prior settlement had not been restored but he had been entitled under the resettlement only (S. L. Act, 1925, s. 22 (2), and see Vol. I., p. 584, note).

3. IN TRUST FOR the sd — durg her life [witht impeachmt of waste (d), & so that durg the intended coverture the same shl be witht power of anticipon] & from & after her death.

4. IF AT THE time of this present trust taking effect in posson no act or event shl have been done or happened whrbt the life intt hby given to the sd B. in the settled land or some pt throv wd if belongg absolutely to him have become vested in or charged in favour of some other pson then In Trust for the sd B. durg his life or until some such act or event as afsd shl be done or happen, And after the failure or determinon durg the lifetime of the sd B. of such determinable life intt but witht prejudice in that event to the future exercise by the sd B. of the powers hrby given to him as such tenant for life as afsd [other than & except, *specify any power to be excepted*] (c) then,

5. UPON TRUST THAT the treesshl enter into the posson or receipt of the rents & profits of the settled land & shldurg the [remainder of the] life of the sd B. continue in such posson or receipt & manage or superintend the managemt of the settled land with all the powers in that behalf conferred by the Settled Land

Limita-
tion of
life
interest
to mar-
ried
woman
without
antici-
pation (c).

Life
interest
in re-
mainder
deter-
minable
on bank-
ruptcy or
aliena-
tion.

Discre-
tionary
trust for
applica-
tion of
income

directs that where the tenant for life is impeachable for waste three-fourths, and where he is not, or where the mines are open at the date of the settlement (*Re Chaytor*, [1900] 2 Ch. 804) one-fourth, of the rent reserved in a mining lease shall, unless a contrary intention is expressed in the settlement, be set aside as capital. As to what is a contrary intention, see *Re Duke of Newcastle*, 24 Ch. D. 129; *Re Daniels*, [1912] 2 Ch. 90; *Re Rayer*, [1913] 2 Ch. 210; *Re Hanbury's S. E.*, [1913] 2 Ch. 357. As to the maintenance and repair of improvements executed under the same Act, see s. 88. As to permissive waste, see 37 Sol. J. 76; *Re Cartwright*, 41 Ch. D. 532; *Re Betty*, [1899] 1 Ch. 821; *Re Parry & Hopkin*, [1900] 1 Ch. 160; *Re Copland*, *ib.* 326. As to equitable waste, see *Bedoyere v. Greville-Nugent*, 25 L. R. Ir. 143; *Weld-Blundell v. Wolseley*, [1903] 2 Ch. 664. As to "ameliorating waste," see *Meux v. Copley*, [1892] 2 Ch. 253.

(c) Where the wife is restrained from anticipation, or takes an interest determinable on bankruptcy, a power to appoint a rent-charge in favour of the first tenant in tail, p. 672, f. 27, should be inserted in the settlement.

(d) See *ante*, p. 656, note (a). As to the effect of the restraint on anticipation on these words, see *Re Lumley*, [1896] 2 Ch. 690.

(e) The question whether any and what powers conferred on the tenant for life should be preserved in this case must of course depend on the circumstances of each case. Powers in gross such as a power to jointure a future wife or to charge portions for the children of a future marriage should usually be preserved, and the power to appoint a rent-charge to the first tenant in tail, p. 672, f. 27, if inserted, should be preserved. The powers of the tenant for life under the S. L. Acts and any extension thereof would of course cease after the forfeiture of his estate; and the statutory powers would become exercisable by the trustees as statutory owners by virtue of the S. L. Act, 1925, s. 23; *Re Frewen*, [1926] 1 Ch. 580.

As to
preserva-
tion of
powers
after for-
feiture.
Effect of
forfeiture.

after
bank-
ruptcy,
&c., of
tenant for
life for
the bene-
fit of him
and his
family (f).

Act, 1925, upon trustees in posson of settled land on behalf of an infant [impeachable for waste] (g) [& with power to stock & cultivate farms & plant underwood] & shl keep up & maintain the mansion-house, grounds, & park at — in a pper state for occupon & shl out of the rents & profits of the settled lands includg the produce of the sale of timber [&] underwood [& minerals] pay the expses incurred in such managemt [stockg, plantg, cultivation, keepg up] or orwise in respt of the premes & any annual sums & the intt on any ppal sum charged on the settled land or any pt throf, & shl durg the [remainder of the] life of the sd B. or such shorter period or periods either continuous or discontinuous as the trees shl in their absolute discron think fit, [delegate either expressly or by implicon, witht being responsible for loss, & upon such terms as they shl think fit, all or any of the powers of managemt lastly hrinbfe contd to &] pay all or any pt of the net rents & profits of the settled land, after makg the paymts hrinbfe directed, unto, or apply the same for the maintee or psonal support or benefit of, all or any one or more to the exclusion of the others or other of the followg psons, namely, the sd B. & his wife (if any) & his chln or remoter issue for the time being in existce [whether by his now intended or any after taken wife, &] whether minors or adults, & the other psons for the time being interested in remr whether absolutely, contingently or orwise in the settled land in such mner as the trees shl in their absolute discron think pper, & shl durg such period & at such discron as afsd permit all or any of such psons psonally to occupy all or any of the settled lands, & subjt to the discronary trust or power lastly hrinbe contd shl pay or apply the surplus of the sd rents & profits to the pson or psons or for the pposes to or for wch the net rents & profits of the settled land wd be

(f) See *ante*, pp. 517, 518, notes, and for another form see *Re Freme*, [1926] 1 Ch. 580. The parties for whose benefit this discretionary trust is declared will not together constitute the tenant for life under the S. L. Act, 1925. On its coming into operation the trustees will become statutory owners by virtue of s. 23 of the Act; and if the trust is in remainder after the determination by forfeiture of a determinable life interest, a conveyance of the settled land must be taken by them from the previous owner whose estate has become forfeited (s. 7 (4)).

Where trustees pay income under a discretionary trust, the property so paid may become liable to succession duty, or, in the case of a will, to legacy duty: *Att.-Gen. v. Wade*, [1910] 1 K. B. 703.

(g) See S. L. Act, 1925, s. 102.

payable or applicable if the sd B. were dead, or shl permit the settled land to be occupied or enjoyed by such pson or psons [Provided always & it is hby declared that the trees shl not be liable or responsible for allowing the sd B. to remain in posson or receipt of the rents & profits of the settled land after the failure or determinon in his lifetime of the trust hrinbefe contained in his favour unless & until the trees shl have received express notice of the event wch shl cause such failure or determinon]. And from & after the death of the sd B.

6. UPON TRUST THAT the sd, *son*, & his assns shl durg the joint lives of himself & the sd, *father*, receive an annuity or yrly rent-charge of £——, to commence from the —— day of —— [the intended marre], & to be charged upon & issuing out of the settled land & to be considered as accruing from day to day, but to be payable qtrly witht any deduction (b) [except for duty] or, “free from all death duties” on, &c., *specify days*, or, “on the usual qtr days,” the first of such paymts to be made on the —— day of —— next [at the end of three calr months after the intended marre], if the sd, *son*, shl then be livg : [AND subjt & charged as afsd].

Limitation of annuity or rent-charge to son during joint lives of himself and father (a).

7. AND UPON THE FURTHER TRUST that if the sd, *son*, shl die in the lifetime of the sd, *father*, leavg one or more son or sons, the settled land shl from & after the death of the sd, *son*, & durg the joint lives of the sd, *father*, & the eldest or only son for the time being in existce of the sd, *son*, stand & be charged with the paymt to the trees of an annuity or yrly rent-charge of £—— until such eldest or only son for the time being shl attain the age of —— yrs, & after he shl have attained that age of an annuity or yrly rent-charge of £——, such respective annuities or yrly rent-charges to be considered as accruing from day to day but to be pd by eql qtrly paymts on the usual qtr days witht any deduction (b) [except for duty] or, “free from all

Limitation of rent-charge to trustees for maintenance of son's eldest son in the event of his pre-deceasing father.

(a) As to the remedies of the owner of a rent-charge, see L. P. Act, 1925, s. 121 ; Vol. I., pp. 70, 377, 440, 634. Estate duty may, perhaps, be saved by giving the rent-charge to the son in fee.

(b) As to the effect of the words “without any deduction” as regards land tax, income tax, and succession duty, see Elph. Introd., 7th ed., 479 ; *Earl of Egmont's S. E.*, [1912] 1 Ch. 251 ; *Re Shrewsbury Estate Acts*, [1924] 1 Ch. 315 ; and as regards estate duty, *Re Parker Jervis*, [1898] 2 Ch. 643 ; *Re Coxwell*, [1910] 1 Ch. 63 ; *Re Wedgwood*, [1921] 1 Ch. 601 and the cases there referred to ; *Re Viscount Portman*, [1924] 2 Ch. 6 ; and *Re Viscount Portman (No. 2)*, [1925] 1 Ch. 294. As to deduction of income tax, see *ante*, p. 561, note.

“Without any deduction.”

death duties," & the first qtrly paymt throf resply to be made on such of the sd days as shl happen next after the death of the sd, *son*, or after his sd eldest or only son shl attain the age of — yrs (as the case may be) ; AND it is hby agrd that the trees shl stand possed of the same respective annuities or yrly rent-charges [of £—— & £—— hrinbfe charged & made payable to them] Upon trust to apply all or any pt throf resply at their discreon for the maintee & educon or orwise for the benefit of such eldest or only son for the time being of the sd, *son*, as afsd durg his minority, either directly or by paying the same for that ppose to the guardian or guardians for the time being of such eldest or only son witht being concerned to see to the applicon throf, And that such pt (if any) of the same respective annuities or rent-charges as may not be applied in mner afsd shl be accumulated by the trees by the investmt throf in any investmts hby or for the time being by law authorised for the investmt of trust moys, but with power to resort to any such accumulons in any subseqt yr & to apply the same for the maintee, educon or benefit of such eldest or only son in mner afsd, & subjt thereto such accumulons shl belong to such eldest or only son, & shl be pd to him on his attaing the age of twenty-one yrs, or to his ads if he shl die under that age, & in the event of his attaing that age in the lifetime of the sd, *father*, the sd annuity or yrly rent-charge of £—— shl thenceforth be pd to him. And subjt & charged as afsd.

Limita-
tion of
rent-
charge to
wife with-
out anti-
cipation.

8. UPON TRUST THAT the wife shl durg her life receive, *or*, "the wife shl durg the joint lives of the husbd & wife receive by way of pin-moy," an annuity or yrly rent-charge of £—— commeneg from the intended marre, *or*, "the annuity or yrly rent-charge followg, that is to say, so long as the sd, *husbd's father*, shl be livg, the yrly sum of £—— commeneg from the intended marre, & after his death the yrly sum of £——," to be charged upon & issuing out of the settled land & to be considered as accruing from day to day but to be payable qtrly without any deduction (*c*) [except for duty] *or*, "free from all death duties," on, &c., *specify days*, *or*, "on the usual qtr days," the first of such paymts to be made on such of the sd days as shl happen next after the intended marre, but so that [durg coverture (*d*)], she shl not have power to anticipate

(c) See *ante*, p. 659, note (b).

(d) If the annuity is only payable during the joint lives of the husband and wife, the words in this bracket will of course be omitted.

such annuity or rent-charge: And subj't & charged as afsd.

9. UPON TRUST THAT the trees sh'l enter into posson &c. as in f. 5, *supra*, AND sh'l out of the net rents & profits of the settled land after makg the paymts hrinbfe directed, pay to the sd — durg his life the yrly sum of £—— commencg from the date of these presents to be considered as accrug from day to day but to be payable qrtly witht any deduction on the usual quarter days, the first of such paymts to be made on the — day of — next, AND sh'l accumulate (e) the surplus of such net rents & profits after paymt of the sd anny at compound intt by investg the same & the resultg income throf in any investmts in which capital moy is hby or by statute authorised to be invested.

Trust to pay annuity and accumulate residue of rents and profits when legal estate is vested in trustees.

10. UPON TRUST THAT if the wife sh'l survive the husbd, the wife & her assns sh'l thenceforth durg her life receive the annuity or yrly rent-charge [followg, that is to say, if & so long as the sd, *husbd's father*, sh'l be livg the annuity or yrly rent-charge of £——, & from & after his death the annuity or yrly rent-charge] of £——, to be in full for her jointure & to be charged upon & issuing out of the settled land, *or as the case may be*, & to be considered as accruing from day to day but to be payable by four eql qtrly paymts witht any deduction (a) [except duty] or, “free from all death duties,” the first of such paymts [as to the sd rent-charge of £——] to be made at the end of three calr months after the death of the husbd, [if the wife & also the

Limitation of jointure rent-charge to wife.

Variation where the rent-charge is to be increased after the death of the husband's father.

(e) The limits within which accumulations of income may be directed are prescribed by the L. P. Act, 1925, ss. 164, 165, and 166. The permitted periods, which are alternative, include (s. 164) the life of the settlor or 21 years from the death of the settlor. But a direction to accumulate for 21 years from the date of the settlement, unless for payment of debts or for raising portions or otherwise falling within the saving provisions of sub-s. (2), would be void for so much (if any) of the period as remained to run after the death of the settlor, and the income thereafter would belong to the person who would have been entitled thereto if no such accumulation had been directed. A direction for accumulation for a permitted period will not now be invalidated (s. 165) by reason of any accumulation of surplus income being made during a minority under any statutory power. S. 166 reimposes the former restriction relating to accumulation for the purchase of land, but expressly provides (sub-s. 2) that this restriction is not to apply to accumulations directed to be held as capital money. See *Re Dawson*, 39 Sol. J. 557, and *ante*, p. 549, note.

(a) See *ante*, p. 659, note (b).

sd, *husbd's father*, shl then be livg, & as to the sd annuity or rent-charge of £—— to be made at the end of three calr months after the death of the survor of the husbd & the sd, *husbd's father*], if the wife shl then be livg, Provd that the wife shl not durg the intended coverture have power to dispose of or charge such annuity or rent-charge [respective annuities or rent-charges] by anticipon, And subj't & charged as afsd.

Charge of portions for younger children.

11. UPON TRUST THAT the trees shl receive for or on account of portions for the younger children of the intended marre the capital & annual sums hrinar mentioned to be resply chged upon & issuing out of the settled land & to be held by the trees upon the trusts & subj't to the powers & provons for the advancemt & maintce of such younger children hrinar declared concerng the same resply. And subj't & charged as afsd and subj't also to the power of anticipating the raising of portions hrinar contained.

Limitation to sons or daughters successively in tail.

12. IN TRUST FOR the first & every other son [daur] of the husbd [by the wife] successively in remr one after the other accordg to their respective seniorities in tail male, [or for tail general, "in tail"], with remr.

Limitation to daughters as tenants in common in tail, with cross remainders.

13. IN TRUST FOR all the daurs of the husbd [by the wife] as tenants in common in tail [male], with cross remrs betn such daurs as to their origl & accruing shares as tenants in common in tail [male], & if there shl be but one such daur then as to the entirety of the settled land, IN TRUST FOR such one daur in tail [male] with remr.

Power to appoint to son in tail (b).

14. IN TRUST FOR such son of the husbd [by the wife] in tail [male] as the sd — shl by any deed or deeds revocable or irrevocable or by will or codl appt, AND IN DEFAULT of & subj't to any such apptmt.

Limitation to issue as parents or survivor appoint (c).

15. IN TRUST FOR all or such one or more exclusively of the others or other of the chln or remoter issue of the intended marre, such remoter issue to be born & take vested intts within twenty-one yrs from the death of the survor of the husbd & wife, [or in trust for any other pson or psons in trust for such chln or child, or issue], for such estes or este, intts or intt, & if more than one in such shares, & subj't to such charges, powers

(b) This does not authorise an appointment for life or any interest less than an entailed interest: *Re Porter*, 45 Ch. D. 179.

Rule against perpetuities.

(c) In exercising this power the rule against perpetuities (see Goodeve, R.P., 5th ed., pp. 292 *et seq.*) and the other matters discussed in Vol. I., pp. 84 *et seq.*, must be remembered.

of charging, & other powers, provons & limitations over for the benefit of all or any one or more of such chln or issue, & in such mner, as the husbd & wife shl by any deed or deeds revocable or irrevocable jointly appt, & in default of & subj to any such apptmt, then as the survor of them shl in like mner or by will or codl appt; And in default of & subj to any apptmt under either of the powers lastly hrinbfe contd.

16. IN TRUST FOR all or any the children or child of the husbd [by the wife] who being male attain the age of twenty-one yrs, or being female attain that age or marry, & if more than one, in eql shares, And if there shl be no such child, then,

Limita-
tion to
children
in default
of ap-
pointment
(d).

17. UPON THE TRUSTS, & with & subj to the powers & provons wch under or by virtue of the sd settlmt of, &c., were subsistg or capable of takg effect in the settled land immedly bfe the execution of the sd disentailing deed of, &c., [& were subseqt to the entailed intt limited by the sd settlmt to the sd —], & so as to confirm or restore the same trusts, powers, & provons.

Ultimate
limitation
to uses of
former
settle-
ment.

18. IN TRUST FOR the right heirs of the sd — [deced] in fee simple or absolutely accordg to the nature of the ppty.

Ultimate
limitation
to right
heirs (a).

19. IN TRUST FOR the husband in fee simple or absolutely accordg to the nature of the ppty.

Ultimate
limitation
to hus-
band (b).

20. IF THE husbd shl survive the wife & marry again, he may at any time or times either in contemplon of or after

Power to

(d) There is now no object in adopting the old form of limitation to children with a provision for accruer to the others on the death of any one under 21, or in the case of a daughter under that age and without having married. The limitation, however framed, can only take effect behind a trust for sale. Upon the interests of the children falling into possession the settled land must be conveyed to the trustees of the settlement who will hold it on the statutory trusts for sale and otherwise (S. L. Act, 1925, s. 36).

(a) As to the mode of tracing the descent, see Inheritance Act, 1833, s. 4; and as to the operation of this limitation see L. P. Act, 1925, s. 132, which provides that a limitation of real or personal property in favour of the heir, either general or special, of a deceased person, which if limited in respect of freehold land before 1926 would have conferred on the heir an estate in the land by purchase, shall operate to confer a corresponding equitable interest in the property on the person who would, if the general law in force before 1926 had remained unaffected, have answered the description of the heir, either general or special, of the deceased, in respect of his freehold land, either at the death of the deceased or at the time named in the limitation, as the case may require. See also Norton on Deeds, 317. A limitation to the heir at a particular time will be found, *post*, p. 846.

As to limita-
tions to
right
heirs.

(b) See L. P. Act, 1925, s. 131, which abolishes the rule in *Shelley's Case* (1 Co. Rep. 93 b).

husband to limit estates to sons by a future marriage in priority to daughters of present marriage. any such future marre by any deed or deeds revocable or irrevocable or by will or codl appt, that subjt & witht prejudice to the entailed intts hby or in exercise of this present power limited to the sons of the husbd, & to all intts & charges prior to & to the powers overreaching such entailed intts the settled land shl stand limited in trust for the first & every other son of the husbd by any such aftertaken wife successively in remr one after the other accordg to their respective seniorities in tail [male], & so that the same limitations shl take effect in priority to the entailed intts hby limited in trust for the daurs of the intended marre: AND IT IS HBY AGRD that this power may be exercised as often as the husbd shl marry again.

Name and arms clause. With variations (c).

21. EVERY PSON who shl under the trusts hrof become entitled as tenant for life or tenant in tail [male or in tail] by pchase to the posson or receipt of the rents & profits of the settled

As to name and arms clause.

(c) The form of a Name and Arms clause given in the note in Butler's edition of Coke upon Littleton (Butl. Co. Litt. 327a, note (2) II. 1, 2), "has probably been the parent of most of those in modern use." 3 Dav. Prec. 352. Another form occurs in Sand. Uses, 4th ed., App., No. 1, Vol. I., p. 377. Conditions as to the assumption of a particular surname are common and involve little difficulty. See *ante*, p. 338, note (b), and *Re Crewe*; Times Newsp. Nov. 7th 1922. But conditions requiring the assumption and continuous use of particular arms, though not uncommon in the past, are often so worded as to present very serious difficulties. It is dangerous to make a title to property depend upon a condition, full compliance with which can seldom, if ever, be easily or conclusively proved, or of which a beneficiary may inadvertently commit a breach. See *Bevan v. Mahon-Hagan*, 27 L. R. Ir. 399; 31 L. R. Ir. 342. The College of Arms, or Herald's College, which has its office in Queen Victoria Street, E.C., was incorporated by a charter of Richard III. in 1483. Its powers in regard to grants of arms seem to be prescriptive; they are not conferred by the charter. Grants of arms in England are now made by the Kings of Arms by virtue of a special warrant from the Earl Marshal, for whose warrant the applicant for arms presents a petition. In Scotland the petition is addressed to the Lord Lyon King of Arms, who himself makes the grant. In Ireland a grant is made by the Ulster King of Arms without a formal petition. Arms may also be granted by Act of Parliament. An annual licence to permit the use of armorial bearings is always required: 32 & 33 Vict. c. 14, ss. 18, 19, and 27; *L. C. C. v. Kirk*, [1912] 1 K. B. 345. Where a Royal licence is obtained for a change of family name, the licence may expressly authorise the use of the family arms subject to their being "exemplified" by the College of Arms. As such authority is only given when the arms are lawfully borne by the family whose name is assumed, a grant is unnecessary, but an exemplification is made by the Kings of Arms, and the fees for an exemplification are less than for a grant. If an exemplification is refused a condition that the arms shall be "lawfully assumed" becomes impossible;

land, other than a person who sh^l then use the surname of — [& bear the arms of —,] [& other than a married woman,] [& other than a p^{son} who wd forfeit anor este or int^t by complyg with this provon,] sh^l within one yr after he [or she] sh^l so become entitled [*where infants may become entitled in possession, add, “or being an infant sh^l within one yr after he or she sh^l attain the age of twenty-one yrs,”* (d)] assume the surname of —, either with or wtht (a) his or her own p^{per} surname, [& apply for p^{per} authority to bear the arms of — [either alone or marshalled with his or her own arms], And in case such authority is obtained sh^l forthwith assume such arms], unless [in either of the sd cases] such p^{son} sh^l be prevented from so doing by death: And if the p^{son} so entitled as afsd (b) sh^l refuse or neglect within such yr to assume such surname [or to apply for such authority as afsd,]

Re Croxon, [1904] 1 Ch. 252; and see *Re Berens*, [1926] Ch. 596. What is a sufficient compliance with a condition merely to “assume” arms is uncertain. See *Austen v. Collins*, 54 L. T. 903; *Re Croxon*, *supra*, p. 257. A condition to assume the arms of a family which cannot be shown to be entitled to any would seem to be impossible. For proceedings to prevent the unlawful assumption of arms, see *Sir Henry Blount's Case*, 1 Atk. 295 (England); *Mackenzie v. Frazer-Mackenzie*, 38 T. L. R. 170 (Scotland). As to who is entitled to possession of a deed of grant or patent of arms, see *Stubs v. Stubs*, 1 H. & G. 257. As to whether clauses of this nature create conditions precedent or subsequent, see *Re Greenwood*, [1903] 1 Ch. 749; and cf. *Re Evans's Contract*, [1920] 2 Ch. 469. Married women are sometimes excepted, as, even if the wife's estate is not made liable to forfeiture by the refusal of the husband to assume the name and arms, it is inconvenient that the husband and wife should bear different surnames, a case of which has occurred.

(d) An infant cannot “refuse or neglect”: *Re Edwards*, [1910] 1 Ch. 541. The following words are often inserted here:—“And also the husbd of every female so becomg entitled [not being a peer or the heir apparent or presumptive to a peer or a person who would forfeit another estate by complying with this provision] sh^l within one yr after such female sh^l so become entitled or marry, whichever sh^l last happen.” But they are objectionable as enabling the husband to forfeit his wife's estate which he may be compelled to do if he takes under another settlement containing a repugnant name and arms clause.

(a) See *Re Eversley*, [1900] 1 Ch. 96. As to what user of name is compliance with this clause, see *Re Drax*, 75 L. J. Ch. 317; and see a clause void for uncertainty in *Re Gassiot*, 51 Sol. J. 570.

(b) If the words in note (d) above are inserted add here, “or, in the case of a married woman, her husbd.”

or shl at any time afterwds disuse such surname from any cause other than becomg a peer or peeress or becomg entitled to use & using by courtesy the title of a peer or peeress [or becomg a married woman], [or shl at any time after obtaing such authority disuse such arms], Then & in every such case immedly after the expiron of such yr or such disuser, the intt of such psons so entitled as afsd shl cease & determine, and the settled land shl thenceforth remain & be held upon the trusts & subjt to the powers & provons upon & subjt to wch the same wld by virtue of the trusts hrinbfe contd remain & be held if such pson being entitled to a life intt were dead or being entitled to an entailed intt were dead intestate & there were a failure of issue inheritable under such entail, & so that in such case all powers annexed to the este or intt of the pson so entitled as afsd shl cease to be exercisable [& that any apptmt previously made by such pson being a married woman of a rent-charge [life or any less intt] to her husbd after her death under the power hrinar contained shl be void, & that the enjoymt of any jointure rent-charge previously appted by such pson being a male in favour of his wife, or of any portions previously appted by such pson [whether a male or female] in favour of his or her younger chln under the respective powers hrinar contained, shl not be accelerated].

Shifting
clause
carrying
over the
estate on
succe-
sion to
another
estate.
With
varia-
tions (d).
As to
shifting
clauses.

22. (i.) IF ANY pson hby made tenant for life or tenant in tail [male] by pchase of the settled land shl under the limitations or trusts of a trust instrumt dated, &c., or “the will dated, &c., of K. deced,” [or by any other means whatsr] become actually entitled, or wd if of full age be actually entitled, to the posson (c) or receipt of the rents & profits or income of the X. Este in the county of — thereby settled, or of the lands or other ppty wch may by any means have become substituted for the sd X. Este or for any pt throf, or to such posson or receipt subjt only to [a term or terms of yrs or] charges havg priority over or [limited or] created under the powers contained in such

(c) As to what amounts to being “actually entitled, &c.,” under the limitations, see *Leslie v. Rothés*, [1894] 2 Ch. 499; *Law Union, &c., Co. v. Hill*, [1902] A. C. 263; *Re Lord Petre*, [1910] 1 Ch. 290; *Re Hinckes*, [1921] 1 Ch. 475.

(d) As to clauses of this nature, see Butler's Note, Co. Lit. 327a; 3 Dav. Prec., 3rd ed., 349, 368 *et seq.*; Vaizey, 1262 *et seq.*; and see forms adapted to various cases, 3 Dav. Prec., 3rd ed., 1145 *et seq.*; 4 *ib.* 523, 539 *et seq.* The above form indicates the contingencies which usually have to be provided for.

trust instrumt [will] or conferred by statute (e), then & so often as the same shl happen the settled land shl go, remain & be held Upon the trusts, & subjt to the powers & provons, upon, & subjt to wch the same wd by virtue of these pnts have gone, remained & been held if such pson were dead intestate & witht issue [male] (f).

(ii.) If & so often as the este or intt of any pson hby made tenant for life shl determine under the provon lastly hrinbfe contd, every jointure, rent-charge, portion, & sum for advancemt or maintce of chln wch may have been charged by him or her on the settled land, & the powers & remedies for securg the same (other than & except any portion or portions wch may have become absolutely vested in his or her child or chln or issue, & the powers & remedies for securg the same), shl thenceforth absolutely cease & become void, & so as not to be restored by such reverter as hrinar mentd (a).

(iii.) If by the effect of the shiftg clause hrinbfe contd the ultimate limitation of the settled land in trust for the sd — in fee simple wd but for this psnt proviso take effect in posson, or in posson subjt only to any charge or charges limited or created by these psnts or by any exercise of the powers hrin contained or conferred by statute, then & immedly thrupon the settled land shl be held upon the trusts, & subjt to the powers & provons, upon, & subjt to wch the same wd have

Provision as to jointures and portions actually vested in the event of estate shifting from the person charging them.

Reverter clause.

(e) The following is another form to be substituted for the above description of the X. Estate, providing for its having undergone changes: "The family este of the sd —, meang thereby the X. Este in the county of —, or the bulk throf, whether consistg of the same premes as the sd Este now consists of, or in any mner altered in the way of addition, diminuon, substiton, or orwise, & whether free from or subjt to incumbees."

Variation for change in the estate.

(f) As to the frame of a shifting clause with reference to the effect of a disentailing assurance as barring it, see *Doe v. Earl of Scarborough*, 3 Ad. & El. 897; *Milbank v. Vane*, [1893] 3 Ch. 79; 3 Dav. Prec., 3rd ed., 363, note, 398.

(a) Or, if so intended, substitute for the last clause, "but nevertheless, witht prejudice as to any tenant for life whose este or intt shl determine under this psnt clause or provon, to any jointure or portion moys wch may have been charged by him under the respective powers for those pposes hrinar contained bfe his este or intt shl so determine, & to any powers & remedies for securg such jointure & portion moys resply."

Variation as to jointures and portions.

Proviso
pre-
serving
jointures
and por-
tions
from de-
struction.

Trusts
for giving
effect to
charge of
portions.
Varia-
tions
where the
amount
to be
raised
depends
on the
number
of chil-
dren.

been held if such shiftg clause had not been inserted in these psnts [if the shiftg clause affects tenants for life, insert here if necessary, "But witht prejudice nevertheless to any jointure, rent-charge [portion or sum for advancement or maintnee] wch may have been charged thron by virtue of the respective powers for those pposes hrinbfe contd in favour of the widow [or any of the chln or remoter issue] of any pson hby made tenant for life, & any powers or remedies for securg the same resply."']

23. (i.) IF THERE shl be any younger child or chln of the intd marre, the tenant for life shl after the death of the husbd at the request of the trees And may in the lifetime of the husbd witht any such request [but durg the lifetime of the sd, *husbd's father*, not witht his consent in writg], by the creation of such legal este in or charge by way of legal mtge upon the settled land or any pt or pts throf or by such other means as may be reasbly (b) necy for that ppose raise & the trees shl rece the sum of £—— (c) [free from death duties] [such sum of moy (c) [free from death duties] as is hrinar mentd, that is to say, if there shl be but one such younger child the sum of £——, & if there shl be but two such younger chln the the sum of £——, & if there shl be three or more such younger chln the sum of £——].

(ii.) THE TREES shl hold the sd sum in trust for all or such one or more exclusively of the others or other of the sd younger chln [or the issue of any such younger child or chln, such issue to take vested intts within twenty-one yrs from the death of the husbd], at such age or time or respective ages or times if more than one, in such shares, & with such future or other trusts for the benefit of such younger child or chln [or issue], & upon such condons, with such restrictions, & in such mner as the husbd (a) shl by any deed or deeds revocable or irrevocable or by will or codl appt; AND IN DEFAULT of & subjt to any such apptmt, In trust for such younger child or chln if more than one in eql shares as tenants in common.

Hotchpot
clause.

(iii.) No such younger child who [or whose issue] shl take

(b) See *Re Sandys*, [1916] 1 Ch. 511; *Re Charteris*, [1917] 1 Ch. 377.

(c) Care must be taken not to make the portions exhaust the whole property, leaving nothing for the eldest son, see *Reid v. Hoare*, 26 Ch. D. 363.

(a) If the wife takes a life interest, a power of appointment may be given to the husband and wife jointly, and to the survivor, as at p. 522, f. 14; in which case consequential variations will be necessary in the rest of the clause.

any pt of the sd sum of £—— [£—— or £—— as the case may be] under any apptmt in psuance of the power hriubfe contd, shl in default of apptmt to the contrary have or be entitled to any share of the unappted pt of the sd sum witth bringg the share or shares appted to him or her [or to his or her issue] into hotchpot, & accountg for the same accordgly.

(iv.) After the death of the husbd [& the sd, *father*,] the tenant for life shl pay to the trees [free from death duties] such annual sum not exceedg an amt equal to intt on the expectant portion or portions for the time being of any child or chln [or remoter issue] of the intended marre at the rate of £—— p.c. p.a. as the trees may require for the maintee & educon or benefit of such child or chln [or remoter issue] for the time being entitled in expectancy whether under any apptmt or in default of apptmt to a portion or portions, or of such one or more exclusively of the others or other of them as the husbd shl by any deed or deeds revocable or irrevocable or by will or codl appt, & in default of & subjt to any such apptmt as the trees shl think fit, such annual sum to be applied by the trees or to be paid by them to the guardian or guardians of such child or chln [or remoter issue] for the ppses afsd witth in the latter case being responsible for the applicon throf.

Maintenance clause (b).

(v.) After the death of the husbd the tenant for life shl at the request in writg of the trees & may in the lifetime of the husbd witth any such request [but not durg the lifetime of the sd, *father*, witth his consent in writg] by any such means as afsd raise any pt or pts not exceedg altogr one moiety of the expectant, presumptive, or vested portion to wch any child [or remoter issue] of the intended marre shl be entitled whether under any apptmt or in default of apptmt & any sum so raised shl be pd to the trees & applied by them for the advancemt or benefit of such child [or remoter issue] as the husbd shl in mner afsd appt, & in default of & subjt to any such apptmt as the trees shl think fit: PROV'D ALWAYS, that every advance so made shl be taken into acct in estimatg the total amt raisable for portions in either of the cases followg, but not orwise,

Advance-ment clause.

Provision as to events in which advances

(b) Portions taken by children under a settlement made by a person in *loco parentis* containing no provision for their maintenance, carry interest: *Re Greaves' S. E.*, [1900] 2 Ch. 683.

are to
be con-
sidered as
part of
portions.

that is to say, if the pson for whose benefit such advance shl be made [or his or her parent] shl be [or become] a younger child, or if but for this psnt proviso more than the sum of £——, *the maximum*, wd become raisable for portions & advancemt, in wch latter case so much of the sum raisable for portions as shl form the excess shl sink into the este & shl not be raised.

Power to
raise total
sum for
portions
before
they are
all pay-
able (c).

(vi.) After the death of the husbd the tenant for life shl at the request in writg of the trees & may in the lifetime of the husbd witht any such request [but not durg the lifetime of the sd, *father*, witht his consent in writg], when any portion or portions shl be payable or when any sum shl be required for an advance, raise by all or any of the means afsd & the trees shl reee the whole or any pt of the sum wch in any possible event may become raisable for portions, & any such sum reced by the trees or the surplus throf after paying thereout any portion or portions & advance or advances then payable shl be held by the trees Upon trust to invest the same in the names of the trees in any of the investmts in wch capl moys are hby or by law authorised to be invested, with power from time to time to vary such investmts at discreon, & shl stand possed of such investmts & the income throf resply as the primary fund for the paymt of portions, maintee, & advancemt resply (if any) wch may subseqtly become payable, in exoneron (except in case of deficiency) of the settled land, & so that no further sum shl be raisable for or on account of portions for or the maintee of younger chiln under the trusts in that behalf hrinbfe contd except in case of such deficiency; And upon further trust, but subjt to the trusts afsd, to apply the whole or any pt of such investmts & income resply wch may not be required for the pposes afsd as if such investmts had been made with capl moy arisd under the Act.

(vii.) If the husbd shl require any portion or portions or any advance or advances to be raised in his lifetime (*d*), he shl be bound to keep down the intt on the sum or sums so raised durg his life.

(c) As to the desirability of inserting this express power, see *Gillibrand v. Gould*, 5 Sim. 149; *Leech v. Leech*, 2 Dr. & War. 568, and *ante*, p. 141, note (a).

(d) Where the husband takes a determinable life interest continue "he or the trees while resply entitled hereunder to the perception of the rents & profits of the settled land shall by & out of the same keep down, &c."

[(viii.) If the husbd shl in any one yr give or secure to any child or chln for whom a portion or portions is or are intended to be hby provd as afsd any sum or sums of moy exceedg in the whole the sum of £—— on his, her, or their marre, or for the paymt of his, her, or their debts (e), or orwise for his, her, or their advcemt or prefermt in the world, then unless the husbd shl in writg orwise direct, such sum or sums of moy shl be taken in substiton *pro tanto* for the respective portion or portions intended to be provd for the respective child or chln sevlly so advanced as afsd, & such an amt only (if any) shl be appropriated for the portion of any child so advanced by the husbd as afsd as togr with the amt of such advancemt will make up & complete the portion hby or by apptmt as afsd provd for such child, & the remr or balance of such portion, or the whole of such portion if the amt of the advancemt shl eql or exceed the amt of the portion, shl sink into the este for the benefit of the inheritance, unless the husbd shl in writg declare his intention to pchase the same for his own benefit, in wch case the same shl form part of his psonal este.]

Provision
for satis-
faction of
portions
by ad-
vance-
ment.

24. IF THE husbd shl marry again, he may at any time either bfe or after such marre by deed or deeds revocable or irrevocable or by will or codl appt to his after-taken wife in the event of her survivg him, for her life or any less period, a rent-charge or rent-charges by way of jointure not exceedg the annual sum of £——, [not exceedg durg the life of the sd, *husbd's father*, the annual sum of £——, & after his death the annual sum of £——, or, “but not to take effect durg the life of the sd, *husbd's father*, witht his consent in writg,”] [&] either subject to or free from death duties & to be chgd upon all or any pt of the settled land & to be payable witht any deduction (g) [except for duty if appted subject thto] at such times & in such mner as the husbd shl direct, [And also may charge the settled lands with all duties wch on the death of the husbd may become charged on any rent-charge appted under this psnt power,] And it is hby agrd that the power of jointurg lastly

Power to
husband
to joint-
ure an
after-
taken
wife (f).

(e) See 3 Day. Prec., 3rd ed., 993 note, and as to advances for payment of debts, see *Re Scott*, [1903] 1 Ch. 1.

(f) The power may be exercised in consideration of a payment to the husband by the wife; *Saunders v. Shafte*, [1905] 1 Ch. 126.

(g) See *ante*, p. 659, note (b).

hrihbfe contd may be exercised as often as the husbd shl marry again.

Power to
subse-
quent
tenants
for life to
charge
jointures.

25. EVERY MALE havg a life intt hrunder in the settled land other than the husbd, [& the sd, *father*,] may either bfe or after he shl become entitled to the posson or receipt of the rents & profits throf, but subjt & witht prejudice to the estes, intts & charges prior to & powers overreachg the intt of the pson exercisg this psnt power & to the estes intts & charges limited or created in exercise of such powers, at any time either bfe or after his marre by deed revocable or irrevocable or by will or codl appt to his wife or intended wife in the event, &c., *as in precedg form, substitutg for "husbd," "the pson exercisg this power" & omitting the word "again" (a).*

Power to
female
tenants
for life to
appoint
rent-
charges
to hus-
bands (b).

26. EVERY FEMALE havg a life intt hrunder in the settled land may either bfe or after she shl become entitled to the posson or receipt of the rents & profits throf, but subjt & witht prejudice to the estes intts & charges prior to & powers overreachg the intt of the pson exercisg this psnt power & to the estes intts & charges limited or created in exercise of such powers, at any time either bfe or after her marre by deed revocable or irrevocable or by will or codl appt to her husbd or intended husbd in the event of his survivg her, for his life or any less period, a rent-charge or rent-charges not exceedg, &c., *as in f. 24, & substitutg for "husbd," "the pson exercisg this power" & omitting the word "again" (c).*

Power to
female
tenants
for life to
appoint
rent-
charge in
favour of
the first
tenant in
tail (d).

27. EVERY FEMALE, &c., may either bfe or after, &c., *as in last form*, at any time or times by any deed or deeds revocable or irrevocable appt to, or to trees for the benefit of, such son of hers as shl for the time being be or but for the operation of a disentaig assuance wd be the first tenant in tail [male] of the settled land, & his wife & issue or any of them & for such estes & intts as she shl think fit, a rent-charge or rent-charges not

(a) If desired, add ff. 30 and 31, *post*, pp. 675, 676.

(b) Where there is a limitation to females as tenants in common the amount of the rent-charge may be made to depend upon the number of the shares.

(c) If desired, add ff. 30 and 31, *post*, pp. 675, 676.

(d) Where a female tenant for life is restrained from anticipation, or where a tenant for life takes a protected life interest, difficulties occur on the resettlement of the property on the eldest son coming of age, owing to the impossibility of the tenant for life charging the property with income for him. The provision in the text may be adapted to the case of protected life interests by saying "any pson may," and saying "he or she," and "his or hers" throughout.

exceedg in the whole the sum of £—— to be charged upon all or any of the settled land, & to be payable durg the life of the pson exercisg this power or durg any less period at such time & in such mner as the pson exercisg this power shl direct. Provided always that no charge of any rent-charge which may be appointed or charged, under this power shall take effect unless and until the person appointing or charging the same shall be or become entitled to the possession or receipt of the rents & profits of the ppty charged therewith.

28. (i.) IF THE husbd shl marry again, he may either bfe or after such marre by any deed or deeds revocable or irrevocable or by will or codl [but subj't & witht prejudice to the charge for portions hrinbfe created in favour of the younger chln of the now intended marre (e)] charge all or any of the settled land with the paymt for the portion or portions of his younger (f) child or chln by any such after-taken wife [or the issue of any such younger child or chln, such issue to be born & take vested intts within twenty-one yrs from the death of the husbd], of the sum of £—— [free from death duties] [or “of any sum not exceedg in the different events hrinar specified the different sums hrinar mentd,” [free from death duties], that is to say, if there shl be but one such younger child the sum of £——, if there shl be only two such younger chln the sum of £——, & if there shl be three or more such younger chln the sum of £——] such sum to be an intt vested in such younger child or chln [or issue] or such one or more exclusively of the others or other of them, at such age or time or respve ages or times, & with such future or other trusts for the benefit of any such younger child or chln [or issue], & upon such condons with such restrictions & in such mner, & if more than one in such shares, & to be subj't to such powers of apptmt exercisable by the husbd or any other pson or psons & to such provons for the maintce, educon, & advancemt of any such younger child or chln at the discrcon of any trees or tree or orwise & to such other powers & provons for the benefit of such younger child or chln, as the husbd shl in the instrumt creatg the charge direct

Power to husband to charge portions for children of a future marriage.

(e) Other charges, if any, subject to which the power is to take effect must be referred to.

(f) See *ante*, p. 654, f. 2. If the estate is settled on the children of the intended marriage only, this power should of course extend to all the children of a future marriage.

[but not to be raised or payable durg the lifetime of the sd, *husbd's father*, witht his consent in writg].

Main-
tenance.

(ii.) The husbd may in like mner charge the settled land or any pt throf [but subj't & witht prejudice as afsd] with such annual sum as the husbd shl in the instrumt creatg the charge direct, not exceedg what the intt at the rate of £4 p.c. p.a. (g) on the expectant portion or portions of any child or chln [or issue] of any such future marre wd amt to, such annual sum to be clear from all deductions except [includg] death duties, & to commence from such time or times [but not durg the lifetime of the sd, *husbd's father*, witht his consent in writg] & to be applied in such mner at the discrion of any trees or tree or orwise for the maintee & educon of the child or chln [or issue] for the time being entitled in expectancy to a portion or portions, or of one or more of them, as the husbd shl in such instrumt direct.

Advance-
ment.

(iii.) The husbd may in like mner charge the settled land or any pt throf [but subj't & witht prejudice as afsd] with the paymt either in his own lifetime or after his death [but durg the lifetime of the sd, *husbd's father*, not witht his consent in writg] of such pt, not exceedg altogr one moiety of the then expectant or presumptive or vested portion of any child [or issue] of any such future marre, as the husbd durg his life or any trees or tree after his death shl in their or his discrion think fit, & may direct the same to be applied for the advancemt or benefit of such child [or issue] in such mner as the husbd durg his life or such trees or tree after his death shl think fit, but so that no advance so made shl be taken into acct in determing the total amt to be raised for portions under this psnt power unless the child [or issue] for whose benefit such advance shl be made [or his or her parent] shl be or become a younger child, or unless but for this psnt proviso more than the sum of £——, *the maximum*, would be raisable for portions & advancemts, in weh latter case so much of the sum raisable for portions as shl form the excess shl sink into the este & shl not be raised.

Death
duties.

[(iv.) The husbd may in like mner charge the settled land or any pt throf [but subj't & witht prejudice as afsd], with the

(g) See *ante*, p. 669, note (b). See also *Re De Hoghton*, [1896] 2 Ch. 385.

death duties wch may become payable in respt of the sd ppal & annual sums so charged as afsd.]

(v.) If the husbd shl require any such portion or portions or any such advance or advances to be raised in his lifetime (a) he shl be bound to keep down the intt on the sum or sums so raised durg his life.

29. EVERY PSON havg a life intt hrunder in the settled land other than the husbd, [& the sd, *husbd's father*,] may either bfe or after he [or she] shl become entitled to the posson or receipt of the rents & profits throf, but subj't & witht prejudice to the estes intts & charges prior to & powers overreachg the intt of the pson exercisg this psnt power & to the estes intts & charges limited or created in exercise of such powers, at any time or times by any deed or deeds revocable or irrevocable or by will or codl, charge all or any of the settled land with the paymt for the portion or portions of the younger child or chln of the pson exercisg this power (meang thrby any child or chln who being male shl attain the age of twenty-one yrs or being female shl attain that age or marry other than any son or sons who bfe his or their resply attaing the age of twenty-one yrs shl or any daur or daurs who bfe her or their resply attaing that age or marryg shl or wd if of full age be or become indefeasibly entitled whether in posson or remr under or by virtue of these psnts to the first [life or (b)] entailed intt in the settled land) [or the issue of any such younger child or chln, such issue to be born & take vested intts within twenty-one yrs from the death of the pson exercisg this power] of the sum of £——, &c., *continue as in precedg form, sub-clauses (i.) to (v.), mutatis mutandis, substitutg for, "husbd," "the pson exercisg this power," & saying, "the younger child or chln of the pson exercisg this power," & "become indefeasibly entitled," &c.*

Power to subse-
quent
tenants
for life to
charge
portions.
Variations for
female
tenants
for life.

30. No CHARGE of any rent-charge or portions or sums for maintce or advancemt wch may be appted or charged under the respective powers hrinbfe contd (c) shl take effect unless &

Provision
that a
charge of
a rent-
charge or

(a) Where the husband takes a determinable life interest, continue as in note (d), p. 670.

(b) These words will be inserted where some of the children of tenants for life are themselves tenants for life.

(c) If this clause is contained in a settlement by a father and son, insert here "by any pson other than the sd, *son*."

portions shall not take effect unless the person charging, or his issue, becomes entitled in possession (a).

Provision limiting total amount chargeable for rent-charges and portions.

Power to appoint life interests to surviving husbands (c).

Variation for name and arms clause.

As to charges not taking effect until possession.

until either the pson charging the same shl be or become, or some or one of his [or her] issue shl become or if of full age wd have become, entitled (d) to the posson or receipt of the rents & profits of the ppty charged therewith.

31. THE SETTLED land shl not by virtue of any apptmts or charges made under the respective powers hrinbfe contd be at any one time subjt to the paymt of rent-charges exceedg in the whole, inclusive of the rent-charge hby limited to the wife (if payable), the annual sum of £—, nor ultimately (b) become subjt to the paymt of any greater sum in the whole for portions, inclusive of the sum hby charged for portions of the younger chln of the husbd, than the sum of £—, so that if by the exercise of the same respective powers the settled lands or any pt throf wd but for this psnt provon have been charged with the paymt of rent-charges or portions to a larger amt, the charge or charges by wch such excess shl be occasd or such pt throf resply as shl form such excess (but as regards such excess of rent-charges only durg the continue of such excess) shl sink into the premes charged therewith & not be raisable, & the same rent-charges & portions resply shl have preferce & priority accordg to the order of limitation of the intts of the psons by whom the same shl resply be chargd.

32. (i.) EVERY FEMALE, &c., may, &c., *as at* p. 672, f. 27, at any time either bfe or after her marre by any deed or deeds revocable or irrevocable or by will or codl appt the settled land or any pt or pts throf to her husbd or intended husbd & his assns for his life or any less period in remr expectant on her death & either subjt to impeachmt of waste or not.

(d) When by the effect of a name and arms clause, a remainderman may become entitled to the receipt of the rents and profits, subject to being ousted by the birth of a person higher in order of limitation, add the words, “for an este or intt not liable to be defeated by the birth of any other pson.”

(a) It should be remembered that this provision will exclude from a jointure the wife of a person not becoming entitled in possession and leaving no issue, and in the case of a settlement in tail male, if he leave daughters only, he will be unable effectively to create a jointure for his wife or portions for the daughters. If this is not intended, the proviso should be omitted. As to the effect of a surrender by a prior tenant for life of his interest to a tenant for life in remainder, see *Truell v. Tysson*, 21 Beav. 437, at p. 444.

(b) See *Re Beckett*, 93 L. T. 746.

(c) The large powers of sale, &c., conferred on tenants for life by the S. L. Acts may sometimes be a reason for giving a power to appoint a rent-charge (see f. 26, *ante*, p. 672), rather than a life estate, to a surviving husband.

(ii.) No man to whom the whole or any pt or pts of the settled land shl be appted as last afsd shl exercise the powers hby given to a tenant for life of jointuring & charging portions.

(iii.) The power lastly hrinbfe contd may be exercised as often as any pson entitled to exercise the same shl marry.

(iv.) No apptmt under this psnt power shl take effect, unless either the pson makg the apptmt shl be or become, or some of her issue shl have become, or if of full age & if no such apptmt had been made wd have become, entitled (*d*) to the posson or receipt of the rents & profits of the ppty comprised in such apptmt.

33. THE SD — may from time to time or at any time by any deed or deeds revocable or irrevocable or by will or codl charge all or any pt of the settled land with the paymt of any moys not exceedg in the whole the sum of £—— [free from death duties] togr with intt thron at a rate not exceedg £5 p.c. p.a. for the benefit of himself or any other pson or psons & for such pposes in all respts as he may think fit ; & any such charge shl take effect in priority to & notwithstanding the trusts hrinbfe declared.

Power to charge a gross sum.

POWERS ADDITIONAL TO THE S. L. ACT POWERS (*a*).

1. THE tenant for life may exercise over or in relation to the settled land the powers hrinar contained by way of extension or enlargemt of the powers & provons of the S. L. Act, 1925, that is to say (*b*) :—

(i.) Power to sell at such price as may be agrd upon, one or more perpetual yrly rent-charges to be charged upon & to issue out of all or any pt of the settled land, of such amt, payable at such times, seed by such powers & provons (includg power to

Clause introductory to clauses extending powers of S. L. Act.

Power to create and sell

(*d*) See note (*d*) on p. 676.

(*a*) See Preliminary Note, *ante*, p. 649.

(*b*) Add such of the following powers as may be appropriate. Any additional or larger power that may be inserted will operate and be exercisable, without any express declaration to that effect, in the like manner and with all the like incidents, effects and consequences, as if it were conferred by the Act, and if relating to the settled land, as if it were conferred by the Act on a tenant for life : S. L. Act, 1925, s. 109.

a rent-charge(c). take & retain posson of the ppty charged with any such rent-charge in case of non-paymt throf or breach of covt) [& either subjt to any then existg rent-charge or rent-charges, or with such indemnity against the same] & to be created in all respects as the tenant for life shl think fit.

Power to exchange for land in Scot-land or Ire-land (d). (ii.) Power to exchange the settled land or any pt or pts throf for ppty situate in Scotland or Ireland.

Power to grant future and rever-sionary leases (e). (iii.) Power to lease the settled land or any pt throf, or any easemt, rt, or privilege of any kind over or in relation to the same in accordance with the staty powers in that behalf, but free from the regulons contd in s. 42 (1) (i.) of the Act so far as may be neey to permit of any such lease being made to take effect in posson at any future time not exceedg — years from the date of exon throf, or in reversion after an existg lease having not more than — yrs to run at the date of exon of the lease so granted.

General power, with consent of trustees, to lease for any purpose and for any term taking fine (g). (iv.) Power with the consent of the trees to lease the settled land or any pt throf or any easemt, right, or privilege of any kind over or in relation to the same, for any ppose whatever, whether involving waste or not, for any term at a rent either nominal or substantial & either uniform or increasg in amt reserved & made payable either in advance or orwise & subjt or not to the reservon of any fine or premium (f), & genlly upon such condons & subjt to such stipulons & provons as the staty tenant for life may think pper.

(c) This form may be useful where the settlement includes land at Manchester or Liverpool. A rent-charge subject to the trusts of the settlement secured upon land which is not so subject is land within s. 117 (1) (ix.) of the S. L. Act, 1925 (see *Re Brewer*, 1 Ch. D. 409), and may therefore be sold under s. 38 (i.) of that Act.

(d) See S. L. Act, 1925, s. 40 (3).

(e) The S. L. Act, 1925, s. 42 (1) (i.) provides that every lease shall be by deed and be made to take effect in possession not later than twelve months after its date, or in reversion after an existing lease having not more than seven years to run at the date of the new lease. A reversionary lease made before 1926 created an *interesse termini* which was not subject to the perpetuity limit: *Mann, Crossman & Paulin, Ltd. v. Land Registry*, [1918] 1 Ch. 203. Such a lease now creates a legal term and falls within L. P. Act, 1925, s. 149 (3), which provides that any legal term limited after 1925 to take effect more than 21 years from the date of the instrument purporting to create it, shall be void.

(f) Any fine reserved must be treated as capital money: S. L. Act, 1925, s. 42 (4).

(g) This form should generally be inserted, as it is impossible to foresee

(v.) Power on the surr under the staty power in that behalf of any existing lease to grant any new lease upon the same terms as to rent & otherwise & subj't to the same covts & provons during the residue of the term granted by the surrendered lease as were reserved & contd in the surrendered lease, & so that the rent, covts & provons to be reserved & take effect during the residue of the term grted by the surrendered lease may be different from those to be reserved & take effect after the expiron of such term.

Provi-
sion as
to rents
and cove-
nants to
be con-
tained
in new
lease
granted
on sur-
render
of old
lease (a).
Power to
raise
money on

(vi.) Power to raise on mtge of the settled land or any pt or pts throf, all or any moy wch may be required for any ppose for wch capl moy is hby or by statute authorised to be

for what purposes leases may be required; and although any lease not authorised by the S. L. Act, but which in the opinion of the Court would be for the benefit of the settled land, may now be effected under an order of the Court (s. 64), the consent of the trustees would usually afford sufficient protection while obviating the expense of an application to the Court.

The S. L. Act, 1925, s. 57, contains special provisions in regard to the rent which may be reserved in leases for small dwellings, small holdings, and dwellings for the working classes.

(a) The S. L. Act, 1925, s. 52, gives to the tenant for life power to accept, with or without consideration, a surrender of any lease in respect of the whole or any part of the land leased, with or without an exception of all or any of the mines and minerals, or in respect of mines and minerals, or any of them; and on a surrender of part only of the land or mines and minerals leased, to apportion the rent; and to make a new lease of the land or mines and minerals surrendered, or of any part thereof, which may comprise additional land or mines and minerals, and may reserve any apportioned or other rent; and the value of the lessee's interest in the lease surrendered may be taken into account in determining the amount of the rent, and of any fine, and the covenants and provisions of the new lease; but the new lease must be in conformity with the Act, and if any consideration is given, it must, if the surrender be accepted under the power conferred by the section, be treated as capital money, unless the Court, on an application made within six months after the receipt thereof, or within such further time as the Court may in special circumstances allow, otherwise directs: over-ruling: *Re Rhodes*, [1909] 1 Ch. 815; *Re Hunloke's S.E.*, [1902] 1 Ch. 941; *Re Penrhyn's Sett.*, [1922] 1 Ch. 500.

Powers of
S. L. Act
as to sur-
renders of
leases.

Any increase of rent reserved by a new lease of the same land for a longer term belongs during the unexpired period of the surrendered term to the tenant for life: *Re Wix*, [1916] 1 Ch. 279.

The Agricultural Holdings Act, 1923, s. 42, makes it unnecessary in making a lease to an existing tenant under a power requiring the best rent to be reserved to take into account against the tenant the increase in the value of the holding arising from improvements made by him.

As to the liability to an outgoing tenant for improvements as between tenant for life and remainderman, see *Mansel v. Norton*, 22 Ch. D. 769.

Provi-
sions of
Agri-
cultural
Holdings
Act, 1923.

mortgage for purposes for which capital money may be expended (b). expended, or "for any purpose for which capital money is by statute or by sub-clauses — & — of clause — hereof authorised to be expended," or as the case may require such mortgage to be effected by the creation of a term of years absolute in the property to be charged therewith or by charge thereof by way of legal mortgage & with such powers & provisions & upon such terms in all respects as the tenant for life may think expedient.

Power to vary terms of mortgages (c). (vii.) Power to concur with any mortgagee or mortgagees for the time being of the settled land to vary the terms of the mortgage in all or any of the manners following, that is to say, by changing the rate of interest & the days on which such interest shall be payable, or the events on which the powers of sale & of appointment a receiver shall be exercisable, or by making or revoking existing provisions for the redemption of interest on payment within a limited time or the continuance of the loan for a term certain, or by conferring on the mortgagee or mortgagees any additional remedies or powers, but so that every such remedy or power shall be such as might be conferred by a mortgage executed by the statutory tenant for life under the powers of mortgaging hereby or by statute vested in him.

(viii.) Power to exercise any of the powers conferred on a tenant for life by s. 58 of the S. L. Act, 1925, with the consent in writing or otherwise of the trustees.

Power to refer to arbitration (d). (ix.) Power to refer to arbitration:—

(a) The amount of the moneys to be received or paid on any sale or purchase or for equality of exchange.

(b) As to the power of a tenant for life to raise money on mortgage, see S. L. Act, 1925, ss. 71, 72, discussed *ante*, p. 107, note (a). The combined effect of the S. L. Act, 1925, ss. 95, 108 and 110, is to render unnecessary the provision formerly inserted in such cases that no mortgagee advancing money on a mortgage purporting to be made under a power in the settlement should be concerned to see that the money is wanted or to see to its application. The money raised will be deemed to be capital money arising under the Act, see ss. 71, 81.

(c) See S. L. Act, 1925, s. 70, containing a somewhat similar but less extensive power to vary and containing also power with the consent of the incumbrancer, as defined in sub-s. (2), to charge the incumbrance on any part of the settled land, whether already charged therewith or not, or on all or any part of the capital money, or securities representing capital money, subject or to become subject to the settlement, by way of additional security, or of consolidation of securities, and by a legal mortgage or otherwise to make provision accordingly.

(d) See S. L. Act, 1925, s. 58. The provisions in the above form are wider than those contained in the Act.

(b) The amt of the rent to be reserved on the grt of a lease or the making of a tency agrmt, whether to or by the tenant for life, & the covts & provons to be contained in such lease or tenancy agrmt.

(c) The terms of the surr of a lease or tenancy.

(d) All disputes betn a tenant & the reversioner, whether the tenant for life shl or shl not be the tenant.

TRUSTS OF ADDITIONAL PROPERTY.

1. The trees shall stand possessed of the investmts mentd in the — Schedule hto upon the trusts & subjt to the powers & provons upon & subjt to wch securities representg capital moy arising under the S. L. Act, 1925, from the settled land ought to be held from time to time, but not so as to increase or multiply chges or powers of chging.

Settle-
ment of
invest-
ments by
reference
to capital
money
(a).

2. The husbd as settlor with the approbation of the wife hby assigns unto the trees ALL & SINGR the plant, machinery, & chattels in or upon or employed in the workg of the settled mines, meaning thby the mines, collieries & minerals in or under the settled land [the ppty hby settled], To HOLD UNTO the trees [IN TRUST for the husbd until the intended marre & after the solemnison throf], Upon the trusts & with & subjt to the powers & provons hrinar declared concerng the same, that is to say :—

Assign-
ment of
mining
plant on
trust for
sale, the
proceeds
to become
capital
money.

(i.) The trees shl at any time or times at the request or with the consent in writing of the tenant for life sell all or any pt of the plant, machinery & chattels hrinbfe assned (all of wch plant, machinery & chattels are hrinar called the mining plant), and shl stnd possd of the net procds to arise from any such sale after paymt of all costs incurred in connection thrwith Upon

(a) See Preliminary Note, *ante*, p. 647. By virtue of s. 78 (1) of the S. L. Act, 1925, either money, securities, or the proceeds of sale of any property may be rendered applicable as if the money or securities were or represented capital money arising under the Act, by the simple expedient of a trust declared by reference to such capital money. Prior to 1926 this was impossible by reason of the rule, established in *Re Walker*, [1908] 2 Ch. 705, and followed in later decisions, that an imperative trust for conversion was the only method open to an individual of effecting an equitable conversion of money into land. An alternative form of trust to effect the same object is provided by sub-s. (2) of the same section.

the trusts & subjt to the powers & provons upon & subjt to wch capital moy arising under the S. L. Act, 1925, from the settled land ought to be held from time to time, but not so as to increase or multiply chges or powers of chging Provided nevertheless that the trees shl have power at their discretion to apply all or any part of the same net proceeds of sale in the pchase of other plant machinery or chattels to be employed in or about the settled mines, and to be held by them upon all the same trusts for sale and orwise, & subject to all the same powers as are hrin declared of & concerning the mining plant.

(ii.) The trees shl permit the tenant for life until sale of the mining plant under the trust in that behalf hrinbfe contd to take & keep posson throf & to employ the same in the workg of the settled mines, with power for the tenant for life to alter or vary the same in a pper course of managemt, but so that the tenant for life shl be bound to keep the mining plant for the time being employed in or about the settled mines properly insured against fire & in good & substantial repair & workg order.

(iii.) If the trees shl be of opinion that the tenant for life is dealg impperly with the mining plant, they may enter into posson of the same & allow the tenant for life to use the same in such mner & subjt to such restrictions as they may think fit.

Assign-
ment of
chattels
as heir-
looms on
trusts by
reference
to limita-
tions of
real
estate (b).

3. (i.) THE HUSBD as settlor with the approbon of the sd wife hby assns unto the trees ALL & SINGR the sd — & other articles & effects specified in the — schdle hto (all of wch articles & effects are hrinar referred to as “the heirlooms”), To HOLD the same UNTO the trees [In trust for the husbd until the intended marre & after the solemnison throf] as heirlooms upon trusts correspondg to the trusts hrin declared concerng the settled land.

Asto heir-
looms.

(b) See L. P. Act, 1925, s. 130 (3). As to the power of selling settled heirlooms under an order of Court, see the S. L. Act, 1925, s. 67, which applies to heirlooms settled with a title (*Re Rivett-Carnac*, 30 Ch. D. 136), and enables the proceeds to be applied in the same way as other capital moneys, or in the purchase of other chattels to be settled as heirlooms: *Re Duke of Marlborough*, 32 Ch. D. 1; *Re Lord Stafford*, [1904] 2 Ch. 72; and see *Re Brown*, 27 Ch. D. 179; *Re Houghton Estate*, 30 Ch. D. 102; *Re Earl of Radnor*, 45 Ch. D. 402; *Re Hope*, [1899] 2 Ch. 679; but land purchased with such proceeds is not subject to the charges affecting the settled land: *Re Duke of Marlborough & Queen Anne's Bounty*, [1897] 1 Ch. 712. As to the different considerations guiding the Court in sanctioning a sale of heirlooms and a sale of the mansion-house, see *Re Ailesbury*,

(ii.) An inventory (c) of the heirlooms sh^l forthwith be made & sh^l from time to time be revised & sh^l be signed by the pson for the time being entitled to the use & enjoymt throf, if of full age, & also by the trees, & the heirlooms sh^l at all times be kept insured agst fire (d) to their full value so far as the same may be of an insurable nature, & pperly preserved, and the costs of makg & revisg such inventory & of the insurance & preservon of the heirlooms sh^l be pd out of the rents & profits of the settled land by the tenant for life or staty owner for the time being throf.

(iii.) The trees sh^l not, except during such period or periods as they may be staty owners of the settled land, be bound to see to the insurce, custody, or preservon of the heirlooms or to interfere in any way in relation thereto other than to require such inventory to be made & signed as afsd, & sh^l not be responsible for any omission, neglect, or default on the pt of the pson entitled to the use or enjoymt throf or orwise in relation to the insurce or preservon throf, but sh^l nevertheless be at liberty at any time if they sh^l so think fit to interfere for the protection of the heirlooms.

[(iv.) All moys reced in respt of any such insurce sh^l be pd to the trees & be laid out by them (if so required by the pson or psons for the time being entitled to the receipt of the rents & profits of the settled freehds) in replacg the articles destroyed or damaged or in pchasing similar articles to be held as heirlooms upon the trusts hrinbfe declared concerning destroyed or damaged articles, & in default of & subj^t to any such requiremt such moy sh^l be held & applied as capl moy (d)]:

[(v.) A sale of all or any of the heirlooms may be made, & the moy arisg from such sale sh^l be pd, invested, applied or orwise dealt with, under the powers of the S. L. Act, 1925

[1892] 1 Ch. 506; [1892] A. C. 356; *Re Hope, sup.* See also generally Wolst. Conv. Acts, 10th ed., 436 *et seq.*

(c) If a schedule of the heirlooms is inserted in the deed, the provision for an inventory may be omitted. Where the chattels intended to be settled consist merely of furniture of no very considerable value, the more convenient plan may be to adapt f. 2, *sup.*, by which a trust for sale with the consent of the tenant for life is imposed in the first instance, and the proceeds of sale not required to be laid out in the purchase of similar chattels is directed to be applied as capital money.

(d) See *ante*, p. 548, note (d).

[with the consent of the trees, but], witht any order of Court (e).]

Entail of
heirlooms
without
reference
to real
estate (f).

4. (i.) THE SD — as settlor [with the approbon of the sd —] hby assns unto the trees ALL & SINGR the sd — & other articles & effects specified in the — schdle hto, To HOLD UNTO the trees [In trust for the sd — until the intended marre & after the solemnison throf] In trust for the sd A. in tail [male].

APPLICATION OF 'CAPITAL MONEY— INVESTMENTS (a)—IMPROVEMENTS.

Applica-
tion of

1. CAPL MOY arising under the S. L. Act, 1925, or deemed to be or to represent capl moy arising under the sd Act, may in

(e) See S. L. Act, 1925, s. 67. As to the circumstances under which the Court will sanction a sale of heirlooms, see *Re Hope's S. E.*, 26 L. T. R. 413.

(f) See L. P. Act, 1925, s. 130.

Capital
money
arising
otherwise
than
under
the Act.

(a) The S. L. Act, 1925, by s. 81 provides that all money which after the commencement of the Act arises from settled land otherwise than under the Act shall, without prejudice to any other statutory provisions affecting the same, be deemed to be or to represent capital money arising under the Act, and shall be paid to or retained by the trustees of the settlement, or paid into Court and invested or applied accordingly; thus bringing into play, in relation to capital money arising from the settled land otherwise than under the Act, the regulations contained in s. 75 of the Act, relating to the investment or other application of capital money arising under the Act and the income of securities on which any investment of capital money is made, and rendering unnecessary the primary trust for the investment in the purchase of freeholds of all capital money arising otherwise than under the Act formerly inserted in all settlements. See, further, the preliminary note, *ante*, p. 647, and cf. *Re Walker*, [1908] 2 Ch. 705; *Re Aspinall's S. E.*, [1916] 1 Ch. 15; *Re Bogg*, [1917] 2 Ch. 239; *Re Twopenny's Settlement*, [1924] 1 Ch. 522.

Invest-
ment of
capital
money
under
S. L.
Act.

S. 73 of the Act provides that capital money arising under the Act may be invested subject to any claims properly payable thereout, and to any special authorised object for which it was raised:—

1. In securities authorised by the settlement or the general law for the investment of trust money, see the T. Act, 1925, s. 1.

2. In discharge of incumbrances, whether affecting the whole or a part of the settled estates: *Re Freme*, [1894] 1 Ch. 1; *Re Lord Gisborough's S. E.*, [1921] 2 Ch. 39; *Re Duke of Manchester's S. E.*, [1910] 1 Ch. 106; or in redemption of land tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, or of any charge in respect of an improvement created on a holding under the Agricultural Holdings Act, 1923, or any similar previous enactment. As to extraordinary tithe, see the Extraordinary

addition to the modes of investmt or applicon throf authorised capital money by the sd Act be invested or applied wholly in one or ptly (b).

Tithe Redemption Act, 1886, ss. 5 and 6, amended by the Extraordinary Tithe Act, 1897.

3. In payment for improvements authorised by the Act, see *Re Lord Stamford's S. E.*, 43 Ch. D. 84; *Re Mundy's S. E.*, [1891] 1 Ch. 399; *Re Gaskell's S. E.*, [1894] 1 Ch. 485; *Re Lord Gerard's S. E.*, [1893] 3 Ch. 252; *Re Walker's S. E.*, [1894] 1 Ch. 189; *Re Clarke*, [1902] 2 Ch. 327; *Re Blaggrave's S. E.*, [1903] 1 Ch. 560; *Re Calverley's S. E.*, [1904] 1 Ch. 150; *Re Leveson-Gower's S. E.*, [1905] 2 Ch. 95; *Re Lord Leconfield's S. E.*, [1907] 2 Ch. 340; *Re Windham's S. E.*, [1912] 2 Ch. 75; *Re Blake's S. E.*, [1923] 2 Ch. 128.

4. In payment of costs incurred under or in pursuance of the Agricultural Holdings Act, 1923, or any similar previous enactment or in the execution of any improvement in Part I. or Part II. of the First Schedule of that Act.

5. In payment for equality of exchange.

6. In discharge of fines payable on alienation of land affected by manorial incidents.

7. In payment of any gross sum attributable to capital payable as compensation for the extinguishment of manorial incidents and for the acquisition of mines and other rights of the lord, and for compensation of the steward.

8. In redemption of any compensation rentcharge created for the extinguishment of manorial incidents.

9. In commuting any additional rent, payable on conversion of perpetually renewable leaseholds and satisfying compensation claims on such conversion.

10. In the purchase of the freehold reversion of leasehold land subject to the settlement.

11. In the purchase of freehold or leasehold land (the latter having 60 years unexpired), with or without the minerals (but not out of England unless authorised by the settlement: sub-s. (2). See *Re Gladwyn's Trust*, [1919] 1 Ch. 232. It is further provided by s. 74 of the Act that the land purchased may be subject to any quit or chief rent, easement or restrictive covenant, or to any liability to maintain sea-walls, &c., or to any improvement rentcharge capable under the Act of being redeemed out of capital money.

12. In the purchase in fee, or for 60 years or more, of minerals and easements convenient to be held with the settled land.

13. In redemption of rentcharges in connection with improvements under S. L. Act, 1925, Third Schedule, Part I.

14. In the purchase, with the leave of the Court, of any leasehold interest

(b) Care should be taken not to insert in this clause any methods of applying capital moneys which are only intended to be adopted with the consent of the trustees, for it will be observed that the tenant for life has the right (S. L. Act, 1925, s. 75 (2)) to direct that capital money shall be applied in any of the methods authorised by the Act, one of which is s. 73 (1) (xxi.), in any mode authorised by the settlement with respect to money produced by the sale of the settled land.

in one & ptly in another or others of the followg modes, namely :—

Invest-
ments.

(i.) Investmt in or upon, &c., *extension of interim powers of investmt*, see pp. 532 to 542, f. 1 to 7.

Costs of
settle-
ment.

[(ii.) Paymt of all the costs & expses of & incidental or preliminary to the preparon, approval, exon & perfectg by all pties of the recited disentailg deed, the vesting deed, or this trust instrumt, & of any other deeds or instrumts relatg to the settled ppty executed concurrently hrwith.]

Succes-
sion duty.

[(iii.) Paymt of the succon duty payable in respect of the succon of the sd ——— to the settled land.]

whereof the immediate reversion is settled so as to merge the leasehold interest, unless the Court otherwise directs, in the reversion. See *Re Duke of Westminster's S. E.* (No. 2), [1921] 1 Ch. 585.

15. In payment of costs in connection with improvements under Town Planning Act, 1925.

16. In the purchase of an annuity charged under the Tithe Act, 1918, s. 4.

17. In payment of any sum agreed to be paid to a local authority for taking over a private road on the settled property.

18. In financing a building lessee on the security of an equitable mortgage of the building agreement.

19. In payment to any person absolutely entitled or empowered to give an absolute discharge. This includes trustees, persons having a joint power of appointment (*Re Winstanley*, 54 L. T. 840); tenant for life and remainderman (*Anson v. Potter*, 13 Ch. D. 141); but not a person entitled to an equitable base fee only: *Re Reynolds*, 3 Ch. D. 61.

20. In payment of costs, see *Re Beck*, 24 Ch. D. 608; *Re Clifford*, [1902] 1 Ch. 87; of agent's commission: *Re Maryon Wilson's S. E.*, [1901] 1 Ch. 934; but not on a short letting; *Re Leveson-Gower's S. E.*, *sup.* Extra costs occasioned by incumbrances on the life interest ought not, as a general rule (*Cardigan v. Curzon-Howe*, 40 Ch. D. 338, 41 Ch. D. 375; *Re Peel's S. E.*, [1910] 1 Ch. 389), but the costs of an abortive sale (*Re Smith's S. E.*, [1891] 3 Ch. 65), and of successfully defending proceedings brought by a purchaser in default (*Re Foster's S. E.*, [1922] 1 Ch. 348), ought to be paid out of capital moneys.

21. In any other mode in which sale moneys are applicable under the settlement.

As to settled land in Ireland purchased by means of an advance under the Land Purchase Acts, see Irish Land Act, 1909, s. 38; and as to the bonus to the tenant for life, see the Act of 1904, s. 3.

The provisions for investment apply to any money paid into Court under any statute (S. L. Act, 1925, s. 76); to any money in the hands of the trustees of the settlement and liable to be laid out in the purchase of land to be made subject to the trusts of the settlement (s. 77 (a), see *Re Mackenzie*, 23 Ch. D. 750; to any money held by trustees on trusts creating entailed interests therein (s. 77 (b)); to money directed to be held

(iv.) Purchase of freehold property situate in Scotland or Ireland (c).

[(v.) Putting into thorough repair or rebuild or renew the messuage or dwelling & premises called — House & the outbuildings thereof & the farm & other buildings fences & gates on the said — Estate (d).]

[(vi.) Payment of the expenses of stocking any farm which may for the time being be in hand.]

[(vii.) Payment for any of the following improvements, namely : specify any improvements not mentioned in Part I. of the Third Schedule to the Act which it may be desired to include without any obligation on the part of the tenant for life to repay by instalments (e).]

[(viii.) Payment of all costs & expenses of or incidental to any of the matters aforesaid.]

2. CAPITAL MONEY arising under the S. L. Act, 1925, & may be deemed to be or to represent capital money arising under the said Act from either the X. Estate or the Y. Estate may be applied in the same manner (including the purchase of land) as if it had arisen from the

on the same trusts as, or on trusts corresponding as nearly as may be with the limitations of the settled land (s. 78), see *Re Byng's S. E.*, [1892] 2 Ch. 219; and to money arising from the settled land otherwise than under the S. L. Act (s. 81).

As to the application of money, not being rent, received by way of damages or compensation for breach of any covenant by a lessee or grantee of the settled land, see S. L. Act, 1925, s. 80.

The Finance Act, 1894, s. 9 (7) provides that capital money arising under the S. L. Act, 1882, may be applied in payment of estate duty.

(c) See S. L. Act, 1925, s. 73 (2).

(d) See S. L. Act, 1925, Third Schedule, Part I. (xxv.); and as to the power of the Court in cases amounting to salvage, see *Conway v. Fenton*, 40 Ch. D. 512; and cf. *Re Montagu*, [1897] 2 Ch. 8; *Re Legh*, [1902] 2 Ch. 274; *Re Blake's S. E.*, [1923] 2 Ch. 128.

(e) The improvements authorised by the Act are described in s. 83, by reference to the Third Schedule of the Act, to be the works mentioned or the works for the purposes mentioned in that schedule, and include any operation incident to or necessary or proper for the execution of those works or for carrying into effect those purposes or for securing the full benefit of any of those works or purposes. S. 84 dispenses with the requirement of the Act of 1882 that a scheme for the execution of the proposed improvement should first be submitted for the approval of the trustees or the Court before capital money could be expended upon it. The trustees may now act upon the certificate of a competent engineer or able practical surveyor, employed independently of the tenant for life, to the effect that the work has been properly executed, or under an order of the Court directing or authorising the application of capital money towards the improvement; but may, in the case of any improvement

estates
(a)
which
may de-
volve in
different
manners
on the
death of
the ten-
ant for
life.

Power to
apply
capital
money in
purchase
of mining
plant (b).

Power to
trust es-
to lend
capital
money to
tenant
for life
for stock-
ing farms,
&c. (c).

other of such Estates, & shl be charged as from the date of such applicon with intt at the rate of £4 p.c. p.a. payable half-yrly until repaymt on the Este for whose benefit it shl be so applied for the benefit of the Este from wch the same shl have arisen.

3. The trees may at their discretion at the request of the tenant for life apply capl moy arising under the S. L. Act, 1925, in the pchase of machinery, live or dead plant or other chattels for working the settled mines to be held upon the trusts & with & subjt to the powers & provons hrinbfe declared concerng the mining plant, or such of the same as shl be subsistg & capable of taking effect.

4. THE TREES may at their discron at the request of the sd, *tenant for life*, [the tenant for life] if he [or she] shl be desirous of stockg & cultivatg any arable or pasture land for the time being in his [or her] occupon, apply capl moy arising under the S. L. Act, 1925, or moy deemed to be or to represent capl moy arising under that Act, in advancg the sum or sums (if any) wch in the opinion of the trees shl be neey for

specified in Part II. of the Third Schedule, and not specifically authorised by the settlement, and must, in the case of an improvement specified in Part III., and not so authorised before applying capital money in payment thereof, require repayment to them by not more than fifty half-yearly instalments out of the income of the settled land of the money to be so applied. See sub-s. (2). The tenant for life (s. 85) may create out of the settled land a yearly rentcharge sufficient in amount to discharge such half-yearly instalments.

As to the effect of a provision in the settlement for the creation of a sinking fund to recoup to capital an outlay for improvements, see *Re Sudbury, &c.*, [1893] 3 Ch. 74.

Apart from the Act, when works on settled property are carried out in obedience to a compulsory order, the cost of such of them as are permanent improvements is chargeable against capital: *Re De Teissier*, [1893] 1 Ch. 153; *Re Farnham*, [1904] 2 Ch. 561.

(a) See *Re Freme*, [1894] 1 Ch. 1. The case of two estates settled by different instruments upon the same limitations is provided for by the S. L. Act, 1925, s. 91. In that case capital money arising under either settlement may be applied as if it were capital money arising under the other settlement. Where one estate is subject to incumbrances to which the other is not subject, the two estates are nevertheless deemed to be settled upon the same limitations, but in that case the powers of the section relating to the application of capital money are not to be exercised without an order of the Court. Cf. *Re Mundy's S. E.*, [1891] 1 Ch. 399; *Re Byng's S. E.*, [1892] 2 Ch. 219; and *Re Lord Monson's S. E.*, [1898] 1 Ch. 427.

(b) See the form of assignment of mining plant on trust for sale, *ante*, p. 681.

(c) A similar application of trust money has been authorised even in the absence of an express power: *Re Household*, 27 Ch. D. 553.

that ppose, but so that the repaymt of such sum or sums shl be seed by a charge upon the life intt of the borr in the settled ppty togr with such poly or pols of life assure as the trees shl require, or by the bond of the borr, or in some other mner to the satisfon of the trees, And the borr shl as betn himself & the other psns entitled under this settlemt be deemed to be tenant of the sd land & shl be entitled on ceasing to occupy the same to such compenson as a tenant wd be entitled to under the Agricultural Holdings Act, 1923, or any Act amending or re-enacting the same on the determinon of his tenancy, & as if the improvemts (if any) made by him, being improvemts specified in the first & second pts of the first schdle to the Agricultural Holdings Act, 1923, had been made respby with the consent in writing of or after notice to the landlord, & such compenson shl be charged on the sd land with intt thron at the rate of £—— p.c. p.a. payable half-yrly.

5. THE TREES may at their discreon apply capl moy arising under the S. L. Act, 1925, and moy deemed to be or to represent capital moy arisg under the sd Act in paymt of any expses incurred by the tenant for life in or about the managemt, protection or preservon of the ppty for the time being subject to the trusts of these psnts or any pt or pts throf or orwise in the exercise of the trusts or powers of these psnts wch the trees shl think fairly chargeable against the inheritance of the sd premes, including the expses of promoting, supporting, or opposing any applicon to Parliamt for any bill, or to the Ministry of Health or other Governmt Departmt for any provonal or other order, or to the Rly Commrs for any order wch the trees may consider benefl or prejudicial (as the case may be) to the sd premes or any pt throf.

Power to trustees to apply capital money in recouping to tenant for life costs incurred in protection of property (d).

6. THE TREES may at their discreon apply capl moy arising under the S. L. Act, 1925, and moy deemed to be or to represent capl moy arising under the sd Act in paymt for any of the improvemts hrinar mentd witht requirg that the moy so applied shl be repaid to them out of the income of the settled land or orwise; that is to say:—*specify any improvemts*

Power to trustees to apply capital money in specified improvements without

(d) The S. L. Act, 1925, s. 92, gives power to the Court to approve of any action or other proceeding for the protection of the settled land or for the recovery of land alleged to be subject to the settlement, and to direct payment of the costs out of property subject to the settlement. As to the costs of abandoned proceedings to recover land alleged to be subject to the settlement, see *Re Wilkie*, [1914] 1 Ch. 77.

requiring
repay-
ment.

Applica-
tion of
insurance
money.

mentd in Parts II. or III. of the S. L. Act, 1925, to wch this provon is intended to relate (e).

7. THE TREES shl apply the moy received in respect of any insurance against fire of the settled ppty or any pt throf in making good the loss or damage occasioned.

MISCELLANEOUS PROVISIONS.

No capi-
talisation
of rent
reserved
on mining
leases.

Restric-
tion of
statutory
powers in
relation
to
mansion
house (b).

1. No pt of the rent arisg under any mining lease of the settled land or any pt throf shl be set aside as capl moy arisg under the Act or orwise, but the whole throf shl go & be reced & appld as rents & profits (a).

2. The tenant for life may with the consent of the trees let — House afsd being the principal mansion house on the sd — este or any principal mansion house or residence for the time being subjt to the trusts hrof, & the pleasure grounds & park & lands usually occupied thrwith resply (c) on lease or orwise for any period not exceedg three years, & either with or witht all or any of the furniture and effects hrby settled as heirlooms thrwith (d). Save as afsd the tenant for life shl not

(e) See *ante*, p. 687, note (e), and for a provision authorising the applica-
tion of capital money in payment of such improvements as to the tenant
for life may seem advantageous, see *Re Duke of Westminster's S. E.*, [1920]
2 Ch. 445.

(a) See S. L. Act, 1925, s. 47; Vol. I., p. 1009, note. As regards
compensation money paid by a railway company in respect of minerals
under settled land, it was held in *Re Robinson*, [1891] 3 Ch. 129, that as
apportionment can be directed under s. 69 of the Lands C. C. Act, 1845,
and that a tenant for life, though without impeachment of waste, is not
entitled to any part of such money. But the clause in the text might be
extended to such compensation money if desired. As to the principle
upon which apportionment of compensation money, in cases where it is
allowed, will be made, see *Re Fullerton*, [1906] 2 Ch. 138; *Re Robinson*,
sup. As to compensation for extinguishment of a right of patronage, see
Re Lord Penrhyn's Settlement Trusts, [1923] 1 Ch. 143. As to the applica-
tion of money received by way of damages for breach of covenant, see
S. L. Act, 1925, s. 80.

(b) See S. L. Act, 1925, s. 65, Vol. I., p. 588, note.

(c) *Pease v. Courtney*, [1904] 2 Ch. 503.

(d) See f. 3, *ante*, p. 682. If the alternative method of settling the
furniture and effects suggested in note (c) to that form is adopted, say
“furniture and effects liby assigned or for the time being
subjt to the trusts hereof.”

witht an order of the Court exercise in relation to such mansion house or residence and premes any of the powers of disposing of settled land conferred by the Act on a tenant for life.

3. IF & so often as there shall be no tenant for life nor, independently of section 23 of the S. L. Act, 1925, any pson having the powers of a tenant for life under that Act, then & in any such case those powers shl be exercisable by — Provision for there being no tenant for life (e).

4. THE HUSBED may at any time or times by deed wholly withdraw from the settlemt for his own benefit or orwise & witht substitutg any equivalent for the same, any portion or portions of the land hby settled not exceedg in the whole in quantity — acres, except — House & the lands usually occupied therewith, & may by such deed revoke all the limitations, trusts, powers, & provons hrin declared of or concerng the lands so withdrawn & appt the same free from this settlemt in any mner he shl think pper, but nevertheless witht prejudice to any leases or mtges wch may have been prevsly created under the powers hrof: And as betn the premes so withdrawn & the premes wh shall remain subject thto, the burden of any mtge created as afsd & affecting the premes jointly shl be borne exclusively by the premes so remaing subjt in exoneron of the premes so withdrawn. Power to withdraw part of property from settlement.

5. IT SHL not be necy for the tenant for life to give any notice to the trees or to their solr of his intention to exercise any powers conferred by the S. L. Act, 1925, or by these psnts in relation to the ppty for the time being subjt to the trusts hrof (d). As to notices under S. L. Act (c).

(e) This clause is intended to be used where the tenant for life is an infant or contingently entitled and it is desired that the guardian or person contingently entitled should exercise the statutory powers rather than the trustees of the settlement. The person so appointed is neither a tenant for life nor statutory owner within the meaning of the Act. *Re Craven S. E.*, [1926] Ch. 985.

(c) See *ante*, pp. 336, 337, and Vol. I., pp. 592, 593, note.

(d) Where a life interest under a previous settlement is kept alive, add:—
“And such dispensen from the necessity of givg such notice shl be applicable in the case of any exercise of any such powers by the sd A., as tenant for life under the sd settlemt [will] of, &c.” As to the notices required where the power exercised relates to property comprised in more than one settlement but settled upon the same limitations, see S. L. Act, 1925, s. 91.

Appoint-
ment of
trustees
for pur-
poses of
S. L.
Act (e).

Power of
appoint-
ing new
trustees.

Refer-
ences to
S. L. Act.

6. THE TREES are hereby appointed to be & shall be trees of the settlement [hereby made] for the purposes of the S. L. Act, 1925.

7. THE power of appointing a new tree or new trees of the settlement shall be vested in the said A. during his lifetime (f).

8. Any & every reference herein contained to the S. L. Act, 1925, shall be deemed to extend to and include any Act or Acts from time to time in force extending, amending or re-enacting the same, but not so as to abridge or restrict any of the powers hereby conferred by reference thereto.

(e) See S. L. Act, 1925, s. 4 (3) (b). The trustees appointed by the trust instrument will also be the trustees for the purposes of the Act of any compound settlement constituted by the trust instrument and any instrument subsequent in date or operation. If, however, there are at any time no trustees for the purposes of the Act of the original trust instrument, then the trustees for the purposes of the Act of any subsequent instrument under which there is a tenant for life or statutory owner will be the trustees for the purposes of the Act of the compound settlement, unless and until trustees of the original instrument or of the compound settlement are appointed: S. L. Act, 1925, s. 31; L. P. (Amendment) Act, 1926, minor amendment to that section. As to trustees of referential settlements, see S. L. Act, 1925, s. 32; and as to the continuance in office of trustees for the purposes of the S. L. Act, see s. 33 and Vol. I., p. 591, note on S. L. Act.

(f) See S. L. Act, 1925, s. 4 (3) (c), and see the forms in Personal Settlements, *ante*, p. 583.

PRECEDENTS.

VESTING DEEDS.

I.

VESTING DEED *on SETTLEMENT on MARRIAGE of*
FREEHOLD & LEASEHOLD PROPERTY. SHORT FORM
WITHOUT RECITALS (a).

THIS VESTING DEED made the — day of —, 19—
BETWEEN A. (*husband*), of, &c., of the first pt, B. (*wife*), of,
&c., of the second pt, & C., of, &c., & D., of, &c., *trees* (hrinar
called the trees) of the third pt. WITNESSETH & it is hby
declared as follows :—

1. In consideration of the intended marre between the sd
A. & B. the sd A. as settlor hby declares that ALL & SINGR
the lands & ppty described in the first and second schdles
hto are vested in the sd A. as to the freehd ppty (b) mentd
in the first schdle hto in fee simple & as to the leasehd ppty
mentd in the second schdle hto for all the residue of
the terms of years for which the sevl pts throf are resply
held UPON the trusts deed concerng the same by a Trust
Instrumt bearg even date with but intended to be executed
contemporaneously with these psnts & made between the
same pties & in the same order as these psnts or upon such
other trusts as the same ought to be held from time to time.

2. The trees are the trees of the settlemt for the pposes of
the S. L. Act, 1925.

(a) See S. L. Act, 1925, ss. 4 and 5. See also the Preliminary Note,
ante, p. 644, and Vol. I., pp. 581 *et seq.* The precedent in the text follows
closely the form in the First Schedule to the Act. The deed will con-
stitute the root of title (s. 110) until superseded, on the death of the tenant
for life, by a vesting instrument made pursuant to the A. E. Act, 1925.

(b) If the property includes enfranchised copyholds subject to any
manorial incidents mentioned in the L. P. Act, 1922, s. 128 (2), the deed
must be produced for endorsement to the steward of the manor within
six months of its execution. See Vol. I., p. 531, note. The freeholds and
enfranchised copyholds will in that case be included in separate parts of
the same schedule, and the latter will be vested subject to manorial rights
etc. as in the next Precedent.

3. The follg additional or larger powers are conferred by the sd trust instrumt in relation to the settled land & by virtue of the S. L. Act, 1925, operate & are exercisable as if conferred by that Act on a tenant for life :—*Insert any additional powers.*

4. The power of apptg a new tree or new trees of the settlemt is vested in the sd A. durg his life.

IN WITNESS, &c.

Two Schedules

II.

VESTING DEED on SETTLEMENT on MARRIAGE of FREEHOLD, ENFRANCHISED COPYHOLD & LEASEHOLD PROPERTY. FULL FORM (c).

THIS VESTING DEED made the — day of — BE-
TWEEN A. (*husbd*), of, &c., of the first pt, B. (*wife*), of, &c., of the second pt, & C., of, &c., & D., of, &c. (hrinar called the trees), of the third pt. *Recite intended marre*, p. 651, f. 1 ; AND WHAS the sd A. is the este owner in respect of the fee simple of the manors, advowsons, tithes (*d*) & tithe rent-charge described in the first pt of the first schdle hto and of the messes, lands & ppty described in the second [*& third*] pt[s] of the same schdle (*e*) & by way of identificon delineated on the plan hto annexed AND is also the este owner of the ppty described in the second schdle hto in respect of the sevl terms of yrs granted by the sevl leases under wch the sevl pts thof are resply held. AND WHAS the ppty described in the second [*& third*] pt[s] of the first schdle hto or some pt or pts throf is or are subjt to the sevl mtge

(c) See S. L. Act, 1925, ss. 4 and 5, and notes (a) and (b) to last Precedent.

(d) It not infrequently happens that the settlor is the owner of the tithes or tithe rent-charge on the whole or part of the lands. These, if not merged, must be expressly vested as they would not pass without mention as part of the land. See *Chapman v. Gatcombe*, 2 Bing. N. C. 516.

(e) Where the property comprises enfranchised copyholds, these may conveniently be included in the second part of the first schedule leaving the remaining freeholds to be included in a third part.

debts amounting in the whole to the sum of £—— mentd in the first column of the third schdle hto & the intt thron resp'y, which respve mtge debts & intt are sevlly secured by the respve mtges mentd in the second column of the sd third schdle, and are now vested in the sevl psons named in the third column of the same schdle. *Similar recital of mtge debts affecting the leasehd ppty referring to a fourth schdle*; AND WHAS upon the treaty for the intended marre it was agrd that all the same ppty should be settled upon the trusts hrinar referred to NOW THIS DEED made in psuance of the sd agmt & in conson of the intended marre WITNESSETH as follows :—

1. The sd A. as settlor with the approbon of the sd B. hby declares that ALL & SINGR the lands & ppty described in the first and second schdles hto are vested in the sd A. as to the freehd ppty mentd in the first schdle hto in fee simple but subj't as to the messes, lands & ppty described in the second pt throf, [wh were formerly of copyhold tenure to the manorial incidents affectg the same & to the rts of the lord of the manor etc. *continue as in the habendum to Prec. III. Vol. I., p. 532,* & subj't as to the messes, lands & ppty described in the second & third pts of the same schdle] to the sevl mtges wch hrinbfe & in the third schdle hto are mentd as affectg the same or pts thof resp'y; and as to the leasehd ppty mentd in the second schdle hto for all the residue of the terms of yrs for wch the sevl pts thof are resp'y held, but subj't to the sevl mtges wch hrinbfe & in the fourth schdle hto are mentd as affectg the same or pts thof resp'y.

2. The sd freehd & leasehd ppty is vested in the sd A. Upon the Trusts declared concerng the same by a trust instrum't bearing even date with but intended to be executed contemporaneously with these psnts & made between the same pties & in the same order as these psnts or upon such other trusts as the same ought to be held from time to time.

3-5. *Continued as in Prec. 1, p. 693, clauses 2-4.*

IN WITNESS, &c.

Four Schedules.

III.

VESTING DEED *for giving effect to a* DERIVATIVE
SETTLEMENT *of* FREEHOLDS *upon the* TERMINATION
of the TRUSTS *of the* ORIGINAL TRUST INSTRUMENT (e).

PARTIES, A. *tenant for life*, 1 ; C. & D., *trustees of the settlement* (hereinafter called the trustees), 2 : *WHAS* X., late of —, deced & este owner at the time of his death of the — Settled Estates, died on the — day of —, 19—, havg by his will dated, &c., apptd E., of, &c., & F., of, &c., to be special exors throf in respt of the sd settled estes & probate of the sd will limited to the sd settled estes was on the — day of — granted out of the — Probate Registry to the sd E. & F. *AND WHAS* by a vesting instrumt dated, &c., & signed by the sd E. & F. as psnl repres of the sd X. deced, the freehd ppty described in the first schdle hto which, with other ppty then constituted or “formed pt of” the — Settled Estes, was vested in the sd A. upon the trusts of a compound settlmt created by a trust instrumt (hereinafter called the first trust instrumt) dated, &c., & made, &c., or “the will dated, &c.,” and a trust instrumt (hereinafter called the subsisting settlmt) dated, &c., & made, &c., & it was thrin stated that the sd E. & F. were the trustees for the pposes of the S. L. Act, 1925, of such compound settlmt. *AND WHAS* all interests & powers under the first trust instrumt have ceased & determined : *AND WHAS* the sd A. is the tenant for life in posson under the subsisting settlmt, and the sd C. & D. are the psnt trustees throf for the pposes of the S. L. Act, 1925, & the power of appointg a new trustee or new trustees throf is vested in the sd A. : *AND WHAS* the sd A. has requested the sd E. & F. to execute a deed discharging themselves from the trusts of the first trust instrumt wch the sd E. & F. have agreed to do upon the exon by the sd A. of this present vesting deed : Now for giving

(e) See S. L. Act, 1925, s. 17. So long as the compound settlement subsisted the vesting deed by which the original settlement was affected, or the vesting assent made on the death of the first tenant for life, will have constituted the title deed under which the powers of the tenant for life will have been exercised. The vesting deed in the text supersedes the original vesting deed and becomes a good root of title to the settled property.

effect to the requiremts of the S. L. Act, 1925, THIS DEED WITNESSETH as follows :—

1. The sd A. as settlor hby declares that ALL & SINGR the ppty described in the schdle hto is vested in the sd A in fee simple upon the trusts declared concerng the same by the subsistg settlemt or upon such other trusts as the same ought to be held from time to time.

2, 3 and 4 as in *Prec. I.*

IN WITNESS, &c.

Schedule.

IV.

VESTING DEED *for giving effect to a VOLUNTARY SETTLEMENT of an ENCUMBERED ESTATE where there is NO TENANT FOR LIFE (a).*

PARTIES, A., settlor, 1; B. & C., trees (hrrnar called the trees), 2. WHAS the sd A. is the este owner in respect of the fee simple of the ppty described in the first schdle hto: AND WHAS the sd ppty or some pt or pts throf is or are subjt to the sevl mtge debts amountg in the whole to the sum of £—— mentd in the first column of the second schdle hto & the interest thon resply, which respve mtge debts & intt are severally secured by the respve mtges mentd in the second column of the sd second schdle hto, & are now vested in the

(a) See S. L. Act, 1925, s. 4 (2), and *post*, p. 714, note (c). The above precedent is intended for the case of a voluntary settlement framed as in *Prec. XII*, *post*, p. 714, so as to constitute the trustees statutory owners. See *Re Frewen*, [1926] Ch. 580.

Where prior to 1926 land was conveyed to trustees upon trust for persons by way of succession, the settlement was effective, but the first taker, unless his interest fell short of any of the interests specified in the S. L. Act, 1882, s. 58, could nevertheless exercise the statutory powers of a tenant for life and by a conveyance made in exercise of those powers could divest the legal estate from the trustees and confer a good title upon a purchaser. Since 1925 a conveyance of land to trustees upon similar trusts, *i.e.* such that the first taker would have any of the interests described in the S. L. Act, 1925, s. 20, would not constitute an effective settlement of the legal estate within s. 4 of the Act. It would neither operate to transfer the legal estate to the trustees nor enable the first taker to exercise the statutory powers of a tenant for life, but would take effect as a trust instrument under s. 9 of the Act.

sevl psons named in the third column of the same schdle. AND WHAS the sd A. is desirous of effectg a settlemt of the same ppty upon the trusts hrinar referred to : NOW THIS DEED made in psuance of the sd desire WITNESSETH as follows :—

1. The sd A. as **benefi owner** hby conveys to the trees ALL & SINGR the lands & ppty described in the first schdle. hto To HOLD the same unto the trees subjt to the mtges wch hrinbfe & in the second schdle hto are mentd as affectg the same or pts thof resply.

2. The ppty hby assured is vested in the trees upon the trusts declared concerng the same by a trust instrumt bearg even date with, but intended to be executed contemporaneously with these psnts, & made between the same pties & in the same order as these psnts or upon such other trusts as the same ought to be held from time to time.

3-5. *Continue as in Prec. I., p. 693, clauses 2-4.*

IN WITNESS, &c.

Two Schedules.

V.

VESTING TRANSFER ON SETTLEMENT ON MARRIAGE OF REGISTERED LAND (b).

H.M. LAND REGISTRY.

LAND REGISTRATION ACT, 1925.

District . . .
Title No. . .
Property . . .
[Date.]

PURSUANT to a trust deed of even date hrwith made betn A., *husbd* of, &c., of the first pt, B., *wife* of, &c., of the second pt, & C. & D. [*trees of the settlemt*] of the third pt.

(b) Land Registration Rules, r. 100, and Form 23 in the schedule thereto The schedule supplies further forms (21 and 22) to meet the case of land settled by a person absolutely entitled other than the tenant for life and that of land settled where there is no tenant for life.

I the sd A. hereby declare as follows :—

(a) The land is vested in me upon the trusts from time to time affecting it by virtue of the sd trust deed.

(b) The sd C. & D. are the trees of the settlement.

(c) The following powers relating to land are expressly conferred by the trust deed in extension of those conferred by the S. L. Act, 1925 : *set out any additional powers intended to be conferred.*

(d) The sd A. (or as the case may be) has the power to appoint new trees of the settlement.

And I apply for the entry of the following restrictions :—

No disposition under which capital money arises is to be registered unless the money is paid to C., of, &c., & D., of, &c., or into Court.

Except under an order of the registrar, no disposition is to be registered unless authorised by the S. L. Act, 1925 (c).

IN WITNESS, &c.

(c) See L. R. Rules 56–59 and the schedule, Form 9, to which is appended the following note :—

“In cases where the settlement so provides a further provision may be added to the Restriction that no transfer of the mansion house (shown on an attached plan or otherwise adequately described to enable it to be fully identified on the General Map, Ordnance Map, or Filed Plan) is to be registered without the consent of the said A. & B. or an order of the Court.”

The appropriate restriction for the case of a transfer to the trustees of a settlement as statutory owners is that given in Form 10 of the schedule.

TRUST INSTRUMENTS.

VI.

TRUST INSTRUMENT of SETTLEMENT (c) on MARRIAGE of FREEHOLDS and LEASEHOLDS, belonging to the HUSBAND with usual clauses, the LIMITATIONS NOT extending beyond the ISSUE of the MARRIAGE. SPECIAL CLAUSES relating to MINING PROPERTY ; and VARIATIONS where there are EXISTING FAMILY CHARGES under a PRIOR TRUST INSTRUMENT (d).

PARTIES, A., *husbd*, (hrinar called the *husbd*), 1 ; B., *wife* (hrinar called the *wife*), 2 ; C. & D., *tees* (hrinar called the

Forms of vesting deed.

(c) For the appropriate form of vesting deed necessary to effect with the trust instrument, a settlement of the legal estate in the land (S. L. Act, 1925, s. 4), see *Prec. I.*, p. 693, or *Prec. II.*, p. 694. Where there are existing family charges which are not discharged the legal estate in the property will already be in settlement. It will be the subject of a vesting instrument (which will be a vesting assent, if there is no tenant for life under the original settlement,) and the settlement created by the prior trust instrument, and will become the subject of the compound settlement created by the prior and later trust instruments. The later trust instrument, the subject of which at the time of execution is an equitable interest in land, will not, apparently, require a further vesting deed to support it until on the determination of the prior charges or powers it becomes the only trust instrument affecting the legal estate. See S. L. Act, 1925, s. 17. For the appropriate form of vesting deed in that case, see *Prec. III.*, *ante*, p. 696.

Variations where husband entitled subject to prior charges.

(d) The variations in this case will be recitals of the earlier settlement showing that the husband became tenant in tail in possession subject to family charges and the disentailing assurance, and of the vesting deed executed after the commencement of the S. L. Act, 1925, for giving effect to the requirements of that Act, and the agreement for settlement as at p. 653 f. 11. The introductory clauses will run as follows :—

1. The *husbd* hby agrees that he will hold all the ppty comprised in the vesting deed & now subj't to the trusts of the *earlier settlmt*, but subj't to the trusts, powers, & provons throf In Trust for himself, &c.

2. *Definition clause*, p. 654, f. A, 2, defining the *settlmt* as “the *settlmt* effected by this trust instrumt” ; & the *settled land* as “the freehold [& leasehold] ppty comprised in the vesting deed & now subj't to the trusts of the *earlier settlmt*.”

3. *Trusts after marre*, p. 655, f. A, 3, saying, “shl hold the settled land, but subject as afsd, Upon the trusts,” &c.

trees), 3. *Recite intended marre*, p. 651, f. 1; *vesting deed of even date*, p. 651, f. 2. NOW THIS DEED made, &c., as in f. A, p. 654. WITNESSETH as follows:—

Recitals.
Wit-
nesseth.

1. *Trust until marre*, p. 654, f. A., 1.

2. *Definition clause*, p. 654, f. A, 2.

3. *Trusts of settled lands*, p. 655, f. A., 3.

(i.) *Limitation of rent-charge to wife during joint lives of husbd & wife*, p. 660, f. 8.

(ii.) *Limitation of life interest to husband*, p. 656, f. 2.

(iii.) *Limitation of jointure rent-charge to wife*, p. 661, f. 10.

(iv.) *Charge of portions for younger chln*, p. 662, f. 11.

(v.) *Limitation to sons "of the husbd [by the wife (a)]" successively in tail male*, p. 662, f. 12.

[(vi.) *Limitation to sons "of the husbd by the wife" successively in tail general*, p. 662, f. 12, if desired.]

[(vii.) *Limitation to daughters "of the husbd by the wife" as tenants in common in tail general with cross remrs*, p. 662, f. 13.]

(viii.) *In Trust for the husbd in fee fee simple or absolutely accdg to the nature of the ppty.*

4. *Trusts for giving effect to charge of portions for younger chln*, p. 668, f. 23 (i.)-(viii.).

5. *Power to husband to jointure an after-taken wife*, p. 671, f. 24.

6. *Power to husband to charge portions for chln of a future marre*, p. 673, f. 28 (i.)-(v.).

7. *Clause extendg powers of S. L. Act*, p. 677, f. 1.

(i.), (ii.), &c., *Add such of the powers on pp. 677 to 681 as may be required* (b).

[8. *Restriction against disposing of mansion house*, p. 690, f. 2.]

[9. *Clause negativing capitalisation of rent reserved on mining lesaes*, p. 690, f. 1.]

10. *Assmnt by husbd of mining plant upon trusts for sale & orwise for benefit of settled lands*, p. 681, f. 2.

[11. *Provision for there being no tenant for life*, p. 660, f. 3.]

12. *Additional modes of investmt & applicon of capital money*, p. 681, f. 1.

(a) Usually the sons of the husband by any marriage are preferred to his daughters by the intended marriage.

(b) See *ante*, p. 649.



13. *Power to trustees to apply capital money in purchase of mining plant, p. 688, f. 3.*

14. *Power to trustees to apply capital money towards expenses of improvements without requiring repayment of instalments, p. 689, f. 6.*

15. *Power to trustees to apply capital money in recoupg to tenant for life costs incurred in protection of settled property, p. 689, f. 5.*

[16. *Power to trustees to apply capital money in specified improvements, p. 689, f. 6 (c).]*

17. *Provision as to application of insce money, p. 689, f. 7.*

18. *Power for professional trustee to charge, p. 580, f. 6*

[19. *Power to lend capital money to tenant for life for stockg farms, &c., p. 688, f. 4.]*

20. *Provision as to notices under S. L. Act, p. 691, f. 5.*

21. *Appointmt of trees for pposes of S. L. Act, p. 691, f. 6.*

22. *Power of appointmt of new trees, p. 692, f. 7.*

23. *Provision as to references to S. L. Act, 1825, p. 692, f. 8.*

IN WITNESS, &c.

Schedules.

VII.

TRUST INSTRUMENT of SETTLEMENT (d) on MARRIAGE of
FREEHOLDS belonging to the HUSBAND, the LIMITA-
TIONS extending to SONS only of the MARRIAGE. A
SHORT FORM.

PARTIES, as in Prec. I., p. 693. Recite vesting deed of even date, p. 651, f. 2. NOW THIS DEED made in conson of the intended marre betn the husbd & wife WITNESSETH as follows :—

Wit-
nessest

(c) This clause will not of course be required where the desired improvements are incorporated in clause 12.

(d) For the appropriate vesting deed, see Prec. I., ante, p. 693.

1. The husbd shl hold the ppty (hrinar called the settled land) comprsd in the vesting deed In Trust for himself until the intended marre. Trust until marriage.

2. The tenant for life (meang thby the husbd or other the tenant for life or staty owner of the settled land within the meaning of the S. L. Act, 1925) shl after the solemnison of the intended marre hold the settled land upon the trusts & with & subjt to the powers requisite for securing paymt of the annual & gross sums followg [free from death duties], that is to say:— Trusts for raising.

(i.) An annuity of £——, commeng from the death of the husbd payable to the wife, if survivg, durg her life on the usual qtr days, witht power of anticipon durg the intended coverture; Jointure.

(ii.) The sum of £—— to be raised at the option of the husbd either durg his lifetime or after his death & paid to the trees to be held by them In trust for all or any, to the exclusion of the others or other, of the chln or remoter issue of the intended marre, other than any son or sons who bfe his or their resply attaing the age of twenty-one yrs shl become entitled (whether in posson or remr) to the first entailed interest in the settled land, if more than one in such shares & in such mner in all respts as the husbd shl by any deed or deeds, revocable or irrevocable, or by will or codl, appt, AND in default of & subjt to any such apptmt In trust for all or any the chln or child of the intended marre (other than as afsd) who being male attain the age of twenty-one yrs, or being female attain that age or marry, & if more than one in eql shares, AND subjt to the trusts hrinbfe contd, the sd sum of £——, or so much throf as shl not become vested under the sd trusts, shl sink into the este & not be raised; Portions.

(iii.) After the death of the husbd, such annual sum for the maintee, educon, or benefit of each child or grandchild expectantly entitled to a portion as the trees shl think fit, such annual sum not to exceed intt at the rate of £4 p.c. p.a. on such portion, & to be so applied by the trees, or to be pd by them to the guardians or guardian of such child or grandchild for the pposes afsd, witht seeing to the applicon throf; Maintenance.

(iv.) Such sum not exceedg a moiety of the then expectant presumptive or vested portion of any child or grandchild as the husbd shl durg his life in writg direct, or as the trees shl Advance-ment.

after his death think fit, to be raised at the option of the husbd during his lifetime, but orwise after his death, & to be applied for the advancemt of such child or grandchild in such mner as the husbd durg his life, or the trees after his death, shl think fit, but so that, if any such advance shl be made, an eql amt of the sd sum of £——, shl sink into the este & shl not be raised.

3. The tenant for life shl hold the settled land subj't & chged as afsd :

(i.) In trust for the husbd during his life [w'itht impeachmt of waste] with remr.

(ii.) In trust *continue limitation to sons* " of the husband by the wife," p. 662, f. **12**, with remr.

(iii.) In trust for the husbd in fee simple.

[4. Provd always & it is hby decl'd that if the husbd *continue provon for satisfon of portions by advancemt*, p. 671, sub-clause (viii.).]

5. *Clause extending powers of S. L. Act*, p. 677, f. **1**.

(i.), (ii.), &c., *Add such of the powers on pp. 677 to 681 as may be required* (a).

[6. *Additional modes of investmt & applicon of capital money*, p. 684, f. **1**, if required.]

7. *Provision as to application of insurance moneys*, p. 689.

8. *Power for professioial trustee to charge*, p. 580, f. **6**.

9. *Provision as to notices under S. L. Act*, p. 691, f. **5**.

10. *Appointmt of trees for pposes of S. L. Act*, p. 691, f. **6**.

11. *Power of appointmt of new trees*, p. 692, f. **7**.

12. *Provision as to references to S. L. Act, 1925*, p. 692, f. **8**.

IN WITNESS, &c.

(a) See *ante*, p. 649.

VIII.

RESETTLEMENT of FREEHOLDS, LEASEHOLDS, CAPITAL MONEY, and HEIRLOOMS, by a FATHER and his ELDEST SON, on the latter Coming of Age, the LIMITATIONS being extended to COLLATERALS. NAME AND ARMS CLAUSE. SHIFTING CLAUSE, carrying over the ESTATE on SUCCESSION to ANOTHER ESTATE. VARIATIONS where an ADDITIONAL JOINTURE is secured to the FATHER'S WIFE, and ADDITIONAL PORTIONS to his YOUNGER CHILDREN. RELEASE by FATHER of claims (a).

PARTIES, A., father, 1; B., son, 2; C. & D., trees (hrinar called the trees), 3; *Recite trusts subsisting at date of disentailg* Recitals. *assurce*, p. 651, f. 3 or 4; *State of the family* p. 653, f. 10; *Disentailg assurce of freehds [leasehds] & capl moy*, p. 652, f. 5 (b); *Particulars of disentailed capl moy*, p. 652, f. 6, [or, *Short recital of effect of settlmt & disentailg assurce*, p. 652, f. 7, & *Title to capl moy*, p. 653, f. 9]; *Title to leasehds*, p. 653, f. 8; AND WHAS, under or by virtue of the sd settlmt, & in the events wch have happened, the articles & effects specified in the — schdle hto now stand settled in trust for the sd A. for his life, with remr to the sd B. absolutely; *Agrmt for resettlmt*, p. 654, f. 12; NOW THIS DEED made, &c., as in f. B., p. 655, WITNESSETH as follows:—

1. *Appointment of freeholds* (c), f. B, 1, p 655.

(i.) *Limitation to joint appointmt of A. & B.*, p. 655, f. 1.

(ii.) *Limitation of rent-charge to B. durg joint lives of himself & A.* (d), p. 659, f. 6.

Wit-
nesseth.

(a) See the variations for registered land, *ante*, p. 700, note (d).

(b) See S. L. Act, s. 22; *ante*, p. 652, note.

(c) It is conceived that the appointment by the father and son jointly "as settlors" would bind each to do or concur in any act necessary for confirming the settlement according to the statutory covenant. If the settlors appoint "as benefi owners," the implied covenants would usually be limited as to A. to his life interest and as to B. to his interest in reversion.

Regis-
tered
land.

As to
cove-
nants for
title.

(d) Provision often has to be made for the event of the son predeceasing the father leaving male issue, so as to provide maintenance for the eldest grandson during the grandfather's life: see the form *ante*, p. 659. The son's younger children would be provided for (if at all) in the like event under the charge of portions.

(iii.) *Limitation of life estate to A in restoration of original life estate (e)*, p. 656, f. 2, note (b).

Additional
jointure
to father's
wife.

[(iv.) UPON TRUST that if the sd K., A.'s wife, shl survive the sd A., the sd K. & her assns shl thenceforth durg her life receive the yrly rent-charge of £—— to be in addition to the yrly rent-charge of £—— the paymt whrof is secured to her & her assns by the original settlmt, & to be charged upon & issuing out of the settled ppty, *continue limitation of jointure rent-charge, as at* p. 661, f. 10.]

(v.) Chge of portions for younger chldn, p. 662, f. 11, saying "for the younger children hinar mentd of the sd A."

(vi.) *Limitation of life interest to B. (f)*, p. 656, f. 2.

(vii.) *Limitation to sons of B. successively in tail male*, p. 662, f. 12.

(viii.) *The same, in tail general*, p. 662, f. 12.

(ix.) *Limitation to daughters of B. successively in tail male*, p. 662, f. 12.

(e) See *ante*, p. 656, note (b). The original practice of inserting words in restoration of the original life estate which was discontinued in consequence of the decision in *Re Cornwallis-West & Munro's Contract*, [1903] 2 Ch. 150, but revived as a result of the decisions in *Re Constable's S. E.*, [1919] 1 Ch. 178, and *Re Cope & Wadland's Contract*, [1919] 2 Ch. 376, is re-established by the S. L. Act, 1925, s. 22 (2), which provides that where by a resettlement any estate or interest in the settled land is expressed to be limited to any person (whether subject or not to any estate, interest, charge, or power expressly created or conferred by the resettlement) in restoration or confirmation of his estate or interest under a prior settlement, then that person is for all purposes entitled to the restored or confirmed estate or interest as of his former estate or interest; and that in addition to the powers exercisable by him in respect of his former estate or interest, he is capable of exercising all such further powers as he could have exercised by virtue of the resettlement, if his estate or interest under the prior settlement had not been so restored or confirmed, but he had been entitled under the resettlement only.

As to
giving son
protected
life estate.

(f) Notwithstanding *Re Ashby*, [1892] 1 Q. B. 872, where on a settlement by father and son under a joint power of appointment of property not originally belonging to the son, the son's life estate in remainder after the father's death was held to be validly converted into a protected life estate by a provision for cesser on bankruptcy with the usual discretionary trust in that event, it is clear that in the case of an ordinary resettlement, such as that in the text, the son must be deemed the settlor *quoad* the reversion after the father's death, on the principle of *Att.-Gen. v. Braybrooke*, 5 H. & N. 488; 9 H. L. Cas. 150, and other cases decided on the Succession Duty Act, 1853, so that the son's life estate cannot be made determinable on bankruptcy; though a life estate protected against bankruptcy might in effect be given to him by a simple discretionary trust not preceded by a determinable life estate, as in *Holmes v. Penney*, 3 K. & J. 90; see *ante*, p. 517, note.

(x.) *The same, in tail general*, p. 662, f. 12.

(xi-xv.) *Similar limitations to C., the other living son of A., & his issue.*

(xvi.) IN TRUST for every son of the sd A. hrafter to be born successively in remr one after another according to their respective seniorities in tail, with remr.

(xvii.) *Limitation to daughters of A. successively in tail male*, p. 662, f. 12.

(xviii.) *The same, in tail general*, p. 662, f. 12.

(xix.), &c. *Limitations to collaterals.*

(xx.) IN TRUST for the sd B. in fee simple.

2. Name & arms clause, p. 664, f. 21.

3. (i.) The tenant for life (meaning thby the sd A. or other the tenant for life or staty owner of the settled land within the meaning of the S. L. Act, 1925) shall after the death of the sd A. at the request of the trees, and may, in the lifetime of the sd A., witht any such request, by the creation of such legal estate in or chge by way of legal mtge upon the settled land or any pt or pts throf, or by such other means as may be reasonably neey for that ppose raise & direct paymt to the trees of the sum of £—— [free from death duties].

(ii.) The trees shl hold the sd sum IN TRUST for all or such one or more exclusively of the others or other of the younger chln of the sd A., meaning thereby the sd, *here insert the names of A.'s younger chln who have already attained 21, or being daughters have married*, & any other child or chln of the sd A. now already or hrafter to be born, who being male, &c., *continue definition of younger chln*, p. 654, f. 2, *with variation for the case of name & arms clause*, at such age or time, &c., *continue trusts of portions term*, p. 668, (i.)-(viii.), *mutatis mutandis*.

4. Power to tenants for life "other than the sd A.," *to charge jointures*, p. 672, f. 25, "not exceedg the annual sum of £—— for any wife of the sd B., nor exceedg the annual sum of £—— for the wife of any other pson hby made tenant for life after the sd B. in order of limitation."

[5. Power to female tenants for life to appt rent-charges to husbands, p. 672, f. 26.]

6. Power to tenants for life "other than the sd A." *to charge portions*, p. 675, f. 29, *saying* "of any sum not exceedg in the different events hrinar specified the different sums hrinar

Power to
tenants
for life to
charge
portions.

mentd, that is to say, for the younger child or chln of the sd B., if he shl have but one younger child the sum of £——, & if but two younger chln the sum of £——, & if three or more younger chln the sum of £——, & for the younger child or chln of any other pson hby made tenant for life after the sd B. in order of limitation if he [or she] shl have," &c., as above.

7. *Provision that charges of rent-charge or portions shl not take effect unless person charging or his issue becomes entitled in posson*, p. 675, f. 30, with variations in notes.

8. *Proviso limitg total amount chargeable for rent-charges & portions*, p. 676, f. 31.

9. *Shifting clause, carrying over the estate on succession to another estate*, p. 666, f. 22 (i.)-(iii.).

10. *Clause extending powers of S. L. Act*, p. 677, f. 1, saying "The tenant for life or statutory owner of the settled land, within the meaning of the S. L. Act, 1925."

[11. *Restriction agst disposing of mansion house*, p. 690, f. 2.]

Appoint-
ment of
capital
money.

12. The sd A. & B. as settlors in exercise of the power vested in them by the sd disentailg deed & of every other power enabling them or either of them hby appt & each of them hby appts that ALL & SINGR the investmts specified in the schdle hto [& all other (if any) the investmts representg capl moy now subj to the joint power of appointmt vested in them as afsd] shl henceforth be held by the trees Upon the trusts, &c., *continue settlmt of investmts by refce to capl moy*, p. 681, f. 1.

Assign-
ment of
heir-
looms.

13. THE SD A. & B. as settlors accordg to their respective cstes & intts hby assn & each of them hby assns unto the trees ALL & SINGR the articles & effects specified in the — schdle hto To HOLD the same unto the trees as heirlooms upon trusts corresponding, &c., *continue trusts by reference to limitations of freehds*, p. 682, f. 3.

14. *Addonal modes of investmt & applicon of capl moy*, p. 684, f. 1.

15. *Power to trees to apply capl moy towards expses of improvmts witht requiring repaymt by instalmts*, p. 689, f. 6.

16. *Power to trees to apply capl moy in recouping to tenant for life costs incurred in protection of settled ppty*, p. 689, f. 5.

17. *Provon as to application of insce moy*, p. 689, f. 7.

18-23. *Continue as in Prec. VI., p. 702, clauses 18-23.*

Release
of claims
by A.

24. THE SD A. [as well in his capacity of exor of his father X., deced, as in his own right] hby releases & discharges ALL &

SINGR the ppty hby settled from all claims, demands, actions, suits & acets whatsr at law or in equity for or in respt of any moys at any time pd or applied [by the sd X. or] the sd A. in or towards the discharge or satisfon of any of the charges or incumbees for the time being affectg all or any pt or pts of the same ppty or any moys pd or contributed by [the sd X. or] the sd A. for or towards the pchase of any of the sd ppty.

IN WITNESS, &c.

Schedules.

IX.

SETTLEMENT *on MARRIAGE by a TENANT for LIFE (a)*
in POSSESSION of SETTLED ESTATES, CHARGING PIN-
MONEY and a JOINTURE for his WIFE, and PORTIONS
for YOUNGER CHILDREN (b).

PARTIES, as in Prec. VI., p. 702. Recite intended marre, Recitals.
 p. 651 ; *Settlemt or will showing that A. is tenant for life of settled*
estes with power of jointuring & charging portions setting out
the powers in full ; vesting deed executed after the commencemt
of the S. L. Act, 1925, for giving effect to the requiremts of that
Act : AND WHAS upon the treaty for the intended marre, it Agree-
 was agrd that the husbd shd make such provon for the wife ment.
 & his younger chln by her as is hrinar contained ; NOW
 THIS DEED made in conson of the intended marre, WIT-
 NESSETH as follows :—

1. THE HUSBD, as settlor, with the approbon of the wife hby Grant.
 assns unto the trees all the income wch shl arise durg the
 joint lives of the husbd & wife from the freehld [& leasehld]
 ppty [& investmts representg capl moy (c)] now subj to the

(a) An instrument charging land with the payment of a jointure rent-charge or portions is a settlement within the meaning of the S. L. Act, 1925, s. 1 (1) (v.).

(b) This Precedent is adapted to the forms in this collection ; it will of course be understood that the details must be adapted to the forms used in the particular settlement.

(c) The charge is usually confined to the freeholds or some portion of the freeholds subject to the settlement.

Charge
of pin-
money.

subsistg trusts of the recited settlmt To hold the same UNTO the trees upon trust that if the intended marre shl be solemnised the wife shl durg the joint lives of the husbd & wife receive thereout by way of pin-money, &c., *continue limitation of rent-charge to wife*, p. 660, f. 8. And subjt thto In Trust for the husbd absolly.

Charge of
jointure.

2. THE HUSB, as settlor, in exercise of the power vested in him for this ppose by the recited settlmt, or, "will" & of every other power in this behalf him enablg hby appts to the wife durg her life if the intended marre shl be solemnised & she shl survive the husbd the yrly rent-charge of £—— to be in full for her jointure, &c., *continue limitation of jointure rent-charge to wife (a), as at p. 661, f. 9, omitting the words "and subjt & charged as afsd."*

Charge of
portions.

3. (i.) THE HUSB, as settlor, in exercise, &c., as above, hby charges all the sd premes hrinbfe charged with the sd yrly rent-charge of £——, but subjt & witht prejudice to such rent-charge & all powers & remedies for obtaining paymt of the same, with the paymt to the younger child or chln of the husbd by the wife (b), meang thereby any child or chln who being male shl attain the age of twenty-one yrs, or being female shl attain that age or marry, other than any son or sons who bfe his or their resply attaing the age of twenty-one yrs, shl become (c) entitled [or any daur or daurs who bfe her or their resply attaing that age or marryg shl become indefeasibly entitled], whether in posson or remr, to the first entailed intt in the premes comprised in or settled by the recited settlmt, or, "will," [or the issue of any such younger child or chln, such issue to be born & take vested intts within twenty-one yrs

(a) Whether the jointure and portions can be given free from death duties depends on the form of the power.

Remedies for the recovery of the jointure rent-charge are conferred by the L. P. Act, 1925, s. 121.

(b) If the husband has no means of providing for his younger children by a future marriage he may reasonably stipulate that the charge of portions should extend to them. In this case insert here, "or by any woman whom he may marry other than the wife," and insert the provision in note (d) on next page.

(c) Where the eldest son of the marriage is not necessarily the first tenant in tail [male], say, "indefeasibly." Where there is a name and arms or other shifting clause in the settlement giving the power, the variations on p. 654, note, should be used, substituting "the recited settlmt" or "will" for "these psnts," and making other corresponding alterations.

from the death of the husbd] of the sum of £—— [or, “ of, in the different events hrinar specified, the different sums hrinar mentd, that is to say, if there shl be but one such younger child the sum of £——, if there shl be only two such younger chln the sum of £——, & if there shl be three or more such younger chln the sum of £—— ”], [free from death duties], such sum to be an intt vested in such younger child or chln [or issue], or such one or more exclusively of the others or other of such younger chln [or issue], at such age or time, or respective ages or times, if more than one in such shares, & with such future or other trusts for the benefit of any such younger child or chln [or issue], upon such condons, with such restrictions, & in such mner, as the husbd shl by any deed or deeds revocable or irrevocable or by will or codl, appt, AND IN DEFAULT of & subjt to any apptmt under the power lastly hrinbfe contd, to belong to such younger child or chln, if more than one in eql shares as tenants in common, but not to be raisable or payable durg the life of the husbd witht his consent in writg.

(ii.) *Hotchpot clause (d)*, p. 668, *sub-clause (iii.)*.

(iii.) THE HUSB D as settlor in exercise, &c., as above, hby charges all the sd premes hrinbfe charged with the sd portion moys as afsd, but subjt & without prejudice as afsd, with such annual sum [free from death duties] as shl be equal to intt at the rate of £4 p.c. p.a. on the expectant portion or portions of any child or chln [or remoter issue] of the intended marre to commence after the death of the husbd & to be applied at the discron of the trees for the maintenance, &c., *continue maintenance clause*, p. 669, *sub-clause (iv.)*.

Maintenance.

(iv.) The husbd as settlor in exercise, &c., as above, hby

Advancement.

(d) If portions are provided for the younger children of the husband by any marriage, add here as a separate sub-clause: “ The share of the sum hby charged for portions weh may be appted under the power hrinbfe contd to or in favour of the younger chln of the husbd by any woman whom he may marry other than the wife shl not exceed the sums hrinar mentd, that is to say, if there shl be three or more younger chln of the husbd by the wife the sum of £——, if there shl be only two such chln the sum of £——, & if there shl be only one such child the sum of £——.” Other methods of determining the amount that the children of a future marriage may take can readily be adapted from the clause on p. 573.

chges all the sd premes hrinbfe chged with the sd portion moys as afsd, but subjt & witht prejudice as afsd, with the payment, &c., *continue advancemt clause*, p. 669, *sub-clause* (v.) *mutatis mutandis*.

4. *Power to husbd to appt new trees*, p. 692, f. 7.

IN WITNESS, &c.

X.

TRUST INSTRUMENT of SETTLEMENT on Marriage by
HUSBAND'S FATHER of FREEHOLDS on HUSBAND and
WIFE for LIFE, with REMAINDER to their ISSUE, as
they may APPOINT, in DEFAULT EQUALLY (a).

Parties. *PARTIES*, A., husbd's father, 1; B., husbd (hrinar called the husbd), 2; C., wife (hrinar called the wife), 3; D., E. & F.,
Recitals. *trees* (hrinar called the trees), 4. Recite intended marre,
Wit- p. 651, f. 1; *Vesting deed of even date*, p. 651, f. 2. NOW
nessest. THIS DEED made, &c., as in f. A., p. 654, WITNESSETH
as follows:—

1. *Trust until marre*, p. 654, f. A., 1, saying instead of "the husbd" "the sd A."

2. *Definition clause*, p. 654, f. A., f 2.

3. *Trusts of settled land*, p. 655, f. A., 3.

(i.) *Limitation of life interest to husbd*, p. 656, f. 2.

(ii.) *Limitation of life interest to wife*, p. 657, f. 3.

(iii.) *Limitation to issue as parents or survivor appt*,
p. 662, f. 15.

(iv.) *Limitation to children in default of appointmt* (b), p. 663,
f. 16.

(v.) IN TRUST for the sd. A. in fee simple.

4. *Hotchpot clause*, p. 668, f. 23, saying "the settled land."

Advance-
ment.

5. The tenant for life may at any time or times (but during the lifetime of the wife not witht her consent in writing) by legal mtge or chge by way of legal mtge of the settled land or

(a) As to settlements in the above form, see 3 Dav. Prec., 3rd ed., 1234, note; 4 *ib.* 557, note. For similar settlements effected by a trust for sale, see Settlements (Personal), Precedents XI., XII. and XIII., *ante*, pp. 609-618.

(b) If preferred, insert a limitation to all the children as tenants in common in tail general with cross remainders, p. 662, f. 13, *mutatis mutandis*.

any pt or pts throf raise any pt or pts not exceeding altogr one moiety of the expectant, presumptive or vested share of any child or remoter issue of the intended marre in the settled land or the proceeds of sale throf, and any sum so raised shl be paid to the trees & appld by them for the advancemt or benefit of such child or remoter issue in such mnrr as the tenant for life shl direct (c).

6-18. *Continue as in Prec. VI., p. 702, clauses 7, 12, 14-23.*

IN WITNESS, &c.

XI.

SETTLEMENT of FREEHOLDS in COMPLIANCE with a CONDITION in a WILL. SHORT FORM (a).

PARTIES, A., settlor, 1; B. & C., trees of will, 2. *Recite will* Recitals.
of the testor imposg the condon; death & probate: AND WHAS the sd A. being desirous, for the ppose of complying with the sd condon in the recited will, of effecting a settlemt of the legal este in the ppty the subjt of such condon upon the trusts hrinar expressed has accordingly executed a vesting deed bearing even date hrwith and made betn the same parties & in the same order as these psnts whby the ppty thrin described being the ppty the subjt of the sd condon is declared to be vested in the sd A. upon the trust declared concerng the same by a trust instrumt of even date thrin referred to (meang these psnts): NOW THIS DEED made in psuance of the sd desire & in conson of the premes, WITNESSETH as follows:—

1. The sd A. hby agrees that he will hold the ppty comprised in the sd vesting deed upon the trusts, & subjt to the powers

Wit-
nesseth.

(c) After the death of the survivor of the husband and wife, and unless an infant becomes solely entitled, the property will cease to be settled land and will become subject to a trust for sale under s. 36 of the S. L. Act, 1925; in which case the power of advancement conferred by the T. Act, 1925, s. 32, would, if necessary, be available.

(a) This precedent is for a case where strict compliance is essential to avoid incurring a forfeiture; a conveyance in a general form is a sufficient compliance with a condition, see *Scarlett v. Lord Abinger*, 34 Beav. 338. A direction to settle hereditaments may include money liable to be laid out in the purchase of land: *Re Stucley*, [1906] 1 Ch. 67; *Re Gosselin*, *ib.* 120.

(b) It might be more proper in this case that the settlor should convey "as benefi owner," to imply the full covenants for title.

& provons, upon & subjt to wch the same ought to be settled for the ppose of pformg & complyg with the condon contained in the recited will as afsd [& subjt thereto in trust for himself the sd A., in fee simple].

2. *Apptmt of trees for the ppses of the S. L. Act*, p. 691, f. 6.

3. *Power of appty new trees*, p. 692, f. 7.

IN WITNESS, &c.

XII.

TRUST INSTRUMENT *on* VOLUNTARY SETTLEMENT (c) of FREEHOLDS *by a FATHER on his SON and the SON'S MALE ISSUE, the LIMITATIONS being extended as far as the RULE against PERPETUITIES will allow; the FATHER retaining an ANNUITY for his LIFE and reserving POWER to CHARGE a GROSS SUM. TRUSTS for ACCUMULATION. VARIATIONS where the SETTLEMENT is REVOCABLE.*

Recitals.
Family.
Desire to
make set-
tlement.
Frame of
settle-
ment to
avoid
exercise
by settlor
of
statutory
powers

PARTIES, A., *father*, 1; B., *son*, 2; C. & D., *trees* (brinar called the trees), 3. AND WHAS the sd B. has three sons only, namely, K., L., & M.: AND WHAS the sd A. being desirous of

(c) As to the law affecting voluntary settlements, see *ante*, p. 632, note. A settlement framed in the above manner will not constitute the settlor a tenant for life or person having the powers of a tenant for life under the S. L. Act, 1925; and it will make no difference in this respect that the annuity reserved to the settlor may in fact exhaust the whole income. See *Re Strangways*, 34 Ch. D. 423; *Re Hinckes*, [1921] 1 Ch. 475. Another method of attaining the same object would be to direct payment of a definite proportion of the income to the settlor and accumulation of the residue during his life, the accumulations to be added to capital. In such a case the settlor, not being entitled to the possession of the rents and profits of the settled land, would not be tenant for life under s. 19 of the Act; nor would he be a person entitled to the income of settled land under a trust for payment to him during his life within s. 20 (1) (viii.), as he never would become entitled to that portion of the income directed to be added to capital. See *Re Frewen*, [1926] Ch. 580. On the other hand, a trust for payment of the income to the settlor during his life subject to an overriding trust for accumulation of an annual sum would confer upon the settlor the powers of a tenant for life, and a vesting deed in his favour would become necessary in order to constitute an effectual settlement of the legal estate, see the cases cited Vol. I., pp. 586, 587, note.

effecting a settlmt upon the trusts hrinar expressed of his estates at — in the coy of — & being also desirous that such settlmt when made shl be irrevocable has by a conveyance (hrinar called the vesting deed) bearing even date hrwith & made betn the same parties & in the same order as these presents duly vested the same estes in the trees upon the trusts declared concerng the same by a trust instrumt of even date thrin referred to (meaning these presents): NOW THIS DEED made in conson of the natural love & affection of the sd A. for his son the sd B., & for divers other good causes & consons, WITNESSETH as follows :—

Wit-
nesseth.

1. The trees shall hold the ppty comprd in the vesting deed (hrinar called the settled land) UPON TRUST that the trees *continue trusts for managemt for paymt of annuity to A. out of net rents & profits & for accumulation of residue during the life of A.*, p. 670, f. 23.

2. After the death of the sd A. the trees shl hold the settled land & the sd accumulon of income upon the trusts & with & subjt to the powers & provons hrinar declared concerng the same, that is to say :

(i.) *Limitation of life interest to B.*, p. 656, f. 2.

(ii.) *Limitation of life interest to K.*, p. 656, f. 2.

(iii.) *Limitation to sons of K. successively in tail male*, p. 662, f. 12.

(iv.)—(vii.) *Similar limitations to L. for life & his sons in tail male & to M. for life & his sons in tail male.*

(viii.) IN TRUST for every son of the sd B. hrafter to be born successively in remr one after another accordg to their respective seniorities in tail male, with remr.

(ix.) IN TRUST for the sd A. in fee simple.

3. *Power to tenants for life includg B. to jointure*, p. 672, f. 25.

4. *Power to tenants for life (a), to charge portions*, p. 675, f. 29.

5. *Provision that charges of rent-charge or portions shl not take effect unless person charging or his issue becomes entitled in possession*, p. 675, f. 30.

(a) If the settlement contains a charge of portions for the younger children of B., the power here given will be to tenants for life “other than the sd B.”

6. *Proviso limitg total amount chargeable*, p. 676, f. 31, *mutatis mutandis*.

7. *Power to A. to charge gross sum "to be raised forthwith in priority to all other ppal or annual sums charged or chargeable under these psnts."*

8. *Clause extendg powers of S. L. Act, saying "The trees may, &c." (b)*, p. 677, f. 1.

9. *Restriction agst disposg of mansion house*, p. 690, f. 2, *mutatis mutandis*.

10. *Additional modes of investmt & application of capl moy*, p. 684, f. 1.

11. *Power to trees to apply capl moy in recouping to themselves costs incurred in protection of settled ppty*, p. 689, f. 5, *mutatis mutandis*.

12. *Provon as to application of insce moy*, p. 689, f. 7.

13. *Power for professional tree to chge*, p. 580, f. 6.

14-17. *Continue as in Prec. VI.*, p. 702, clauses 20-23.

[18. *Power of revocation*, p. 653, f. 4 (i).]

IN WITNESS, &c.

Schedules.

XIII.

DEED *in exercise of a GENERAL OVERRIDING POWER of APPOINTMENT reserved to a FATHER and SON in a RESETTLEMENT of REAL and PERSONAL ESTATE, effecting various MODIFICATIONS in the RESETTLEMENT (c).*

Parties
Recitals.

PARTIES, A. & B., *apptors*, 1; M. & N., *trees*, 2. *Recite resettlemt of real & psonal este, giving overriding joint power*

(b) See S. L. Act, 1925, s. 108. The additional powers thus conferred will become exercisable by B. after A.'s death.

(c) This is an example of a mode of effecting alterations in a settlement by exercising the power of revocation so far only as is necessary. If the alterations are considerable, it might be better to revoke the settlement altogether, and re-settle; but this would involve the payment of the *ad valorem* settlement duty over again: *Russell v. I. R. Commrs.*, [1902] 1 K. B. 142; which is avoided if the deed only amounts to an alteration of an existing settlement.

of apptmt to A. & B.: AND WHAS the sd A. & B. are desirous of modifying the trusts, powers, & provons by the sd trust instrumt declared of & concerng the ppty comprised in the sd settlmt in mner & to the extent hrinar appearg: NOW THIS DEED WITNESSETH that for effectuatg such objects as afsd, & as to each of them the sd A. & B. in conson of the execution of these psnts by the other of them, they the sd A. & B. do in exercise of the power for this ppose vested in them by the sd settlmt as afsd & of every other power enablg them in this behalf, hby appt that All & singr the sd ppty comprised in the sd vesting deed, or wch is now by any means subjt to the subsistg trusts of the sd settlmt or of any such trusts, shl henceforth (but subjt to all subsistg charges, incumbees, estes, & intts havg precedence to the sd settlmt) go, remain, & be held UPON SUCH TRUSTS, &c., *continue limitation to joint apptmt of father & son*, p. 656, f. 1. AND IN DEFAULT of & subjt to any such apptmt, Upon trusts, & with & subjt to powers & provons similar to the trusts, powrs & provons by & in the recited trust instrumt declared of & concerng the ppty comprised in the sd vesting deed, or such of the same as are now subsistg & capable of takg effect as if the same were hrin repeated with reference thereto SAVE & except, &c., *continue modifications of settlemt.*

IN WITNESS, &c.

Desire to
modify.

Wit-
nesseth.

WILLS (a).

INTRODUCTORY CLAUSES.

Com-
mence-
ment.
Will
made in
contem-
plation of
marriage.

1. I, *testor*, [late of (b) —, & now] of —, declare this to be my last will [or “ This is the last will of me, *testor* [late of — & now] of — ”] wch I make this — day of —, [in contemplation of my marriage with X (x)] hby revoking all other wills & testy dispositions (c) by me heretofore made.

(a) See 4 Dav. Prec.; Elph. Introd., 7th ed., 558. The legislation affecting settlements, for a short reference to which see *ante*, p. 498, note, for the most part affects wills also.

Will of
person
having
no issue.

Without prejudice to the rights and interests of personal representatives, s. 3 of the Wills Act, 1837, authorises and is deemed always to have authorised a person to dispose by will of real property, including chattels real, notwithstanding that by reason of illegitimacy or otherwise he did not leave an heir or next of kin surviving him: L. P. Act, 1925, s. 178.

Will of
lunatic.

A lunatic is not necessarily incapable of making a valid will, see Jarman, 6th ed., p. 50: the power of the Court to settle the property of a lunatic or defective is independent of any testamentary disposition made by such person: L. P. Act, 1925, s. 171.

(b) It may save trouble in establishing the testator's identity, if any past, as well as present address, by which he may be registered in the books of the Bank of England, or any Company, &c., as the holder of any stocks or shares, &c., is given.

(x) Notwithstanding s. 18 of the Wills Act, 1837, a will expressed to be made in contemplation of marriage is not revoked by the solemnisation of the marriage contemplated: L. P. Act, 1925, s. 177. To obtain the benefit of this alteration of the law it is important to remember that the intended spouse should be named.

As to
general
clause of
revoca-
tion.

(c) A testamentary paper in the form of a codicil is not revoked by a revocation of the will: *In b. Savage*, L. R. 2 P. 78. A general clause in a will revoking all former wills revokes a prior testamentary appointment: *Sotheran v. Dening*, 20 Ch. D. 99; whether under a general (*Re Gibbes' Settlement*, 37 Ch. D. 143) or a special (*Re Kingdon*, 32 Ch. D. 604) power; but a mere statement that “ this is the last & only will ” does not revoke a prior will: *Simpson v. Foxon*, [1907] P. 54. A nomination under the Friendly Societies Act, 1896, s. 56, cannot be revoked by will: *Bennett v. Slater*, [1899] 1 Q. B. 45; and see *Re Griffin*, [1902] 1 Ch. at p. 145; and the same is provided as to Industrial Societies by the Industrial, &c., Act, 1913, s. 5 (2). See as to revocation of wills generally Wills Act, 1837, ss. 18–20,

2. I, *testor*, of —, hby declare this to be my last will, wch I make this — day of — for the ppose only of disposg of the este & ppty hrinar mentd, & to the intent that the same shl take effect concurrently with & independently of another will of even date herewith, relatg to my ppty situate at, &c., & not in any way affectg the ppty hby disposed of. Concurrent will.

3. I, *testor*, of —, hby declare this to be a [second] codl wch I make [or “This is a [second] codl made by me, *testor*, of —,”] this — day of — to my will, wch bears date the — day of — [& the former codl to wch bears date, &c.] (d). Codicil.

4. I WISH to be buried wherever I may happen to die, or, “in the family vault at —,” & that my funl shl be as simple & inexpensive as possible, or, “I wish to be cremated, & that my ashes be deposited in, &c.” Direction as to burial (e).

5. I CONFIRM the settlemt [sevl settlemts] made on my marre [with my psnt wife], & I declare that the provons hby made for my wife & chln [& other issue] are intended to be in addition to & not in satisfon of those made or covtd to be made for them resply in & by such settlemt [respective settlemts]. Confirmation of marriage settlement (f).

6. INASMUCH as I have an English domicil, it is my wish & Declaration as to domicil in

and the notes in Hayes & Jarm., 14th ed., 38-46. Sect. 20 of the Wills Act does not apply to the will of a soldier in actual military service. *Re Gossage*, [1921] P. 141. Partial tearing of a will does not necessarily show an intention to revoke the will and the burden of proof that the tearing was done *animo revocandi* is upon the party alleging revocation: *Re Cowling*, [1924] P. 113.

(d) As to the effect of an incorrect reference to the will, see *In b. Reade*, [1902] P. 75.

(e) It may be better not to insert directions as to burial in the will, lest it should not be opened till after the funeral. A testator's directions as to the disposal of his body are not binding on his executors: *Williams v. Williams*, 20 Ch. D. 659; but see 51 Sol. J. 335. It is, however, unlawful to cremate a person who has left written instructions to the contrary: Cremation Regulations, 1920 (Stat. R. & O., 1920—No. 1286), r. 4. As to funeral expenses, see Robbins & Maw, 4th ed., 439.

(f) The object of this clause is not to supply any defect in the validity of the settlement, but to exclude the presumption of satisfaction by the will of any obligation to which the testator or his estate may remain liable under the settlement, and the possible application of the doctrine of election: see notes to *Ex p. Pye*, 2 White; & T., L. C.; *Re Blundell*, [1906] 2 Ch. 222; *Re Northcliffe*, [1925] Ch. 651. Cf. *Re Hall*, [1918] 1 Ch. 562.

will of
land
abroad
(g).

intention that this my will & any codl I may make shl be construed & operate, as far as the case admits, as if I were now & remained until my death domiciled in England.

APPOINTMENT OF EXECUTORS, &c. (h).

Appoint-
ment of
executor
or execu-
tors.

1. I APPT my son D. sole exor, *or*, "my wife C. sole extrix" of this my will, *or*, "A., of, &c., B., of, &c., & C. of, &c., exs of this my will."

(g) A declaration to the effect in the text had a much more restricted operation in a will than in a marriage settlement, as to which, see *ante*, p. 593.

Validity
of wills of
persons
domiciled
in Scot-
land or
abroad.

In making a will of movables in this country for a person domiciled in Scotland or abroad, the draftsman has three distinct points to consider. First, in order to be admitted to probate here, the will must, if the testator be a British subject, be executed in conformity with the Wills Act, 1861 (commonly called Lord Kingsdown's Act), as to which, see Tristram and Coote's Probate Practice, 16th ed., p. 54, or if the testator be a foreigner the will can only be admitted to probate here, either if already proved abroad or if evidence can be adduced that by the law of the testator's domicile at the time of his death the will was validly executed: Tristram and Coote, 16th ed., p. 57. Secondly, the will to be valid here must be proved to be valid by the law of domicile at the testator's death in respect of his capacity to make it and in respect of the provisions contained in it: Dicey, Conflict of Laws, 4th ed., p. 754; *Whicker v. Hume* (1858), 17 H. L. C. 124. Thus, a will of movables in this country will be invalid here if it infringe the Scots law of legitim, at any rate to the extent of the assets disposed of in derogation of the widow's rights. Thirdly, the will will be construed with reference to the law of domicile at the time when it was made: Dicey, 4th ed., p. 765; but a testator may indicate either expressly or impliedly that his will is to be construed by English law: *Re Cunningham*, [1924] 1 Ch. 68.

The Public Trustee cannot prove or act in the trusts of a will depending for its validity on Scots or foreign law: *Re Hewitt's Settlement*, [1915], 1 Ch. 228.

Immovable property is governed entirely by the law of the country in which the immovable property is situated, but a will made by a British subject dealing with chattels real, will be valid if made in accordance with the Wills Act, 1861, though not in accordance with the Wills Act, 1837: Dicey, p. 553. What property is immovable is determined by the *lex loci rei sitae*: *Re Hoyles*, [1911] 1 Ch. 179.

Domicile
deter-
mined by
English
law.

The important question whether a person is or is not domiciled in Scotland or a foreign country must be determined in accordance with the requirements of the English law as to domicile, irrespective of the question whether a Scottish or foreign domicile has or has not been acquired according to Scots or foreign law: *Re Annesley*, [1926] Ch. 692.

Number
of per-
sonal re-

(h) Probate will not be granted to more than four persons in respect of the same property: Supreme Court of Judicature (Consolidation) Act, 1925, s. 160 (1), but power to prove on a vacancy occurring is reserved to the

2. I APPT A., of, &c., B., of, &c., & C. of, &c. (hrinar called my trees), to be the exs & trees of this my will, [& I declare, that the expression my trees (*i*) shall include the sd A., B., & C., and the [survors or] survor of them or other the trees or tree [other than the custodian tree hrinar referred to] for the time being of this my will except where such construction is precluded by the context].

Appoint-
ment of
executors
and trus-
tees.

3. I APPT my wife C. [during her widowhood] & my son D. (hrinar called my trees), to be extrix & exor & trees of this my will [& I direct that in the event of my wife marryg again, the trust este shl be transferred so as to be vested in the other trees or tree for the time being].

The same
including,
wife while
unmar-
ried (*k*).

4. I APPT A., B., & C. (hrinar called my trees), to be the exs & trees of this my will, & if any one of them shl die in my lifetime or shl renounce probate throf, I

The same,
with sub-
stitution
(*a*).

other executors named in the will who have not renounced: Principal Registry Rule 114; District Registry Rule 107. If there is only one personal representative, not being a trust corporation, then during the minority of a beneficiary or the subsistence of a life interest and until the estate is fully administered the court may on the application of any person interested or the guardian, committee, or receiver of such person, appoint one or more additional personal representatives in addition to the one originally appointed: s. 160 (2); but this provision must be read subject to s. 162 (1) which gives the Court a discretion to grant administration to some person other than those interested in the residue in the case of insolvency: *Re Herbert*, [1926] P. 109.

presen-
tatives.

Probate or administration in respect of real estate or any part thereof may be granted either separately or together with probate or administration of personal estate, and may be granted in respect of real estate only where there is no personal estate or in respect of a trust estate only (*Re Dallas*, [1926] W. N. 252), but the grant cannot be severed where the devised estate is known to be insolvent: Supreme Court of Judicature (C.) Act, 1925, s. 155.

Separate
grants for
real and
personal
estate.

As to whether a person can accept the executorship without the trusteeship, see *Re Clout and Frewer's Contract*, [1924] 2 Ch. 230, and cases there cited. As to the appointment of a person abroad to be an executor and trustee "if & when he shall return to England," see *Re Arbib*, [1891] 1 Ch. 601; and as to the appointment of a person to act during the absence abroad of an executor, see *In b. Taylor*, [1892] P. 90; and as to the appointment of trustees for the purposes of the Settled Land Act, see *ante*, p. 692. Where no S. L. Act trustees are appointed the personal representatives of a testator whose will creates a settlement are until other trustees are appointed, themselves trustees for the purposes of the Act: S. L. Act, 1925, s. 30 (3).

(*i*) See *ante*, p. 586, note (*d*). The words in this bracket will be omitted where the definition of trustees *post*, p. 859, f. 19 is used.

(*k*) See Wentworth Off. Ex., 14th ed., 22, 29.

(*a*) See Wentworth Off. Ex., 14th ed., 23—28.

appt D. an exor in his place, & if any one of them shl die in my lifetime or decline to act as tree, I appt the sd D. a tree in his place, & I direct that the trust este shl in such case be transferred so as to be vested in the sd D. jointly with the other trees or tree for the time being.

The same, including son on attaining 21 (b).

5. I APPT A. & B., & also my son C. if & when he shl attain the age of twenty-one yrs (hrinar called my trees), to be the exs & trees of this my will; And I direct that if the sd C. shl not attain that age till after my death the trust ppty shl, on his attaing that age, be transferred so as to be vested in him jointly with the other trees or trees for the time being.

Appointment of legatee special executor (c).

6. I APPT the sd A. exor of this my will as to the sd business, or "bond debt" & premes hrinbfe bequeathed to him, & I direct that the este duty & expses of takg out the limited probate in respt throf shl be borne by him.

Appointment of special executors of settled land (d).

7. I APPT the psons or pson who shl at my death be the trees or tree for the ppses of the S. L. Act, 1925, of the settlmt sub-sistg under the will, dated, &c., & proved, &c., of X. who died

(b) A grant of probate will not be made to an infant until he attains full age: Jud. Act, 1925, s. 165.

(c) As to the effect of such an appointment, see *Lynch v. Bellew*, 3 Phillim. 424; *Re Parker*, [1894] 1 Ch. 707; *Re Cohen & L. C. C.*, [1902] 1 Ch. 187; *Robbins & Maw*, 4th ed., 28.

(d) An appointment of the settlement trustees as special executors is really superfluous as in the absence of any such appointment they are deemed to be such: A. E. Act, 1925, s. 22 (1). Probate specially limited to the settled land is granted to them. Where the general executors are also the trustees a grant of the whole estate is made to them on swearing in the oath that there is settled land of which they are trustees. As to the appointment by the Court of special or additional personal representatives in respect of settled land after renunciation of office or revocation of the grant, see A. E. Act, 1925, s. 23. Where a tenant for life dies wholly intestate the Court may grant letters of administration in respect of the settled land to the trustees of the settlement if they are willing to act: Jud. Act, 1925, s. 162 (1); and in practice sureties are dispensed with where two or more trustees apply for a grant.

Devolution of settled land on death of tenant for life.

On the death of a tenant for life in whom the legal estate in fee simple of the settled land is vested the settled land devolves under s. 1 (1) of the A. E. Act, 1925, upon the settlement trustees as his special executors if he leaves a will. The expression "real estate" in that section includes settled land: s 3 (1) (ii) and the expression personal representative includes the special executor: s. 55 (1) (xi). A grant of probate to the special executors limited to the settled land is, therefore, always a necessary link in the chain of title.

on the — day of — or a trust instrumt dated, &c., & made, &c., & under wch I was constituted tenant for life to be the special exors. of this my will as to the ppty subjt to the sd settlemt.

8. I APPT the Public Tree exor & tree or “to be custodian tree” of this my will. Appoint-
ment of
Public
Trustee
(e).

9. I APPT A., B., & C. the exors, & togr with the Public Tree the trees of this my will. Appoint-
ment of
executors
and trus-
tees with
Public
Trustee.

10. (i) I APPT the — Co (hrinar called the Co) to be the exs & trees of this my will, & I declare that all costs & expses incurred by the Co in the execution of the trusts of this my will may be retained by them with intt at the rate of 5 p.c. p.a. from the time of their being pd until repaymt, out of any moys forming pt of my este, & that the Co shl be entitled to remuneration out of my este free from all death duties in accordance with the scale of fees in use by the Co Appoint-
ment of
company
to be
executors
and trus-
tees (f).

(e) See Public Trustee Act, 1906; Vol. I., p. 123.. The Public Trustee may not accept any trust involving the carrying on of any business; s. 2 (4), except as mentioned in the P. T. Rules, 1912, r. 7; nor may he accept any trust exclusively for religious or charitable purposes; s. 2 (5); *Re Hampton*, 63 Sol. J. 68; *Re Cherry's Trusts*, [1914] 1 Ch. 83. By s. 11 (2) the Public Trustee, in employing solicitors or other agents, is to take into consideration the wishes of the creator of the trust and other persons concerned; but since such wishes may be implied by the existing practice of the creator of the trust, it will usually be unnecessary to insert an express statement of such wishes. A testator may appoint the Public Trustee without previously applying to him for his consent; but the appointment does not take effect until his consent has been obtained: P. T. Rules, 1912, r. 8; and see *Public Trustee v. Little*, 58 Sol. J. 414.

Public
Trustee.

(f) Section 161 of the Supreme Court of Judicature (Consolidation) Act, 1925, provides that the Court may grant probate or administration to a trust corporation either solely or jointly with another person. The grant must be made direct to the trust corporation and not to a syndic or nominee on their behalf. An officer appointed by the corporation may swear affidavits, give security, and do other things, requisite for the grant, and his acts bind the corporation. Any interest in any estate which was on the 1st of January, 1926, vested in a syndic on behalf of a trust corporation acting as personal representative of a deceased person is automatically vested in the corporation by the Act, with the exception of securities registered or inscribed in the name of the syndic, or land or charges registered in his name under the L. R. Act, 1925. In the excepted cases the trust corporation can direct a transfer to themselves. The section has effect whether the intestate died before the 1st of January, 1926, or not. The words “testator or” appear to have been accidentally omitted from s. 161 (5) of the Jud. Act, 1925, which re-enacts s. 14 (6) of the A. of E. Act, Trust
Corpora-
tion.

at the date of this my will [& I declare that all pols wch may be required in respt of my este may be effected by the Co in their own office at the ordinary rates wtht accounting for any profits in respt throf.]

(ii) And I declare that if before the time of my death the Co. shall have gone into liquidation for the ppose of amalgamation or reconstruction or orwise shall have ceased to exist & if at the time of my death there shall be any other corporation which shall have been formed to acquire or shall have then acquired or shall be carrying on the business formerly carried on by the Co., then this my will shall be read & construed as if the name of such other corporation were substituted for that of the Co.

Appoint-
ment of
guardians
(g).

11. I APPT my trees hinfbe named to be the guardians of my infant [adopted] chln [to act jointly with my wife durg her life & also after her death jointly with the guardians or guardian (if any) who may have been appted by her].

1925. It is expressly provided that any such vesting or transfer shall not operate as a breach of a covenant or condition against alienation or give rise to a forfeiture. The term "trust corporation" is defined by s. 175 (1) of the Jud. Act, 1925: see also the Public Trustee (Custodian Trustee) Rules, 1926; [1926] W. N. pt. 2, 266. A grant of probate made by a Colonial Court to a corporation having its principal place of business in the colony may be resealed in the High Court under the Colonial Probates Act, 1892, s. 2; *Re McLaughlin*, [1922] P. 235. As to the position of a manager to whom a grant had been made *eo nomine*, where his company were creditors of the estate, see *Re Richards*, [1901] 2 Ch. 399. As to the appointment of a trust corporation to be custodian trustee, see Public Trustee Act, 1906, s. 4 (3); P. T. Rules, 1912, r. 30; *Re Cherry*, [1914] 1 Ch. 83. As to whether there is a fiduciary relationship between the directors of a trust corporation and the beneficiary, see *Bath v. Standard Land Co., Ltd.*, [1911] 1 Ch. 618.

Guardianship
of Infants
Act,
1925.

(g) Under the Guardianship of Infants Act, 1925, s. 4, the surviving parent will be guardian of the infant children, alone, or jointly with the guardian or guardians (if any) appointed by the deceased parent. If no guardian is appointed by the deceased parent or if the guardian appointed is dead or refuses to act, the Court may if it thinks fit appoint a guardian to act jointly with the surviving parent. A father or mother may by deed or will appoint another person to be guardian of their infant children jointly with the other parent whilst surviving. The father or mother or the guardian so appointed may apply to the Court for the custody of the infant if he or she objects to acting with his or her co-guardian, and if no order is made, the father or mother remains the sole guardian: s. 5. Guardians appointed by the parents after the death of the surviving parent act jointly. Such guardian or guardians may, however, be removed by the Court, if satisfied that it would be for the benefit of the infants: *Re X.*, [1899] 1 Ch. 526; and the jurisdiction extends to infants who are not

12. I APPT A., of, &c., & B., of, &c., to be the guardians of my infant [adopted] chln by my former wife —, & also to be the guardians jointly with my psnt wife —, or with any guardians or guardian who may be appted by her of my infant chln by her.

The same for children of two marriages.

SPECIFIC LEGACIES

1. I GIVE to my wife —, or, “to X of &c.” absolutely [free of legacy duty (a)].

Commencement.

wards of Court, and who have no property : *Re McGrath*, [1893] 1 Ch. 143. The first and paramount consideration to be regarded by the Court in all applications, is the welfare of the infant without regard to the superiority of any claim by the father over that of the mother or *vice versa* or any right possessed at common law by the father : s. 1. Where the Court is satisfied as to the well being of the infant with either parent the claim of the father prevails : *Re Thain*, [1926] Ch. 676. The Act does not affect the right of the father to decide what religious education his children shall receive, or the duty of the guardian after his death to bring up his children in his religious faith : *Re Scanlan*, 40 Ch. D. 200 ; but the rule that children should be brought up in the religion of their father whether living or dead, or in accordance with his wishes, is not so rigid that the Court will not depart from it if sufficient reason be shown, the welfare of the children being the ultimate guide : *Re Nevin*, [1891] 2 Ch. 299 ; *Re Newton*, [1896] 1 Ch. 740 ; *F. v. F.*, [1902] 1 Ch. 688 ; *Re McGrath, sup.* ; *Re W.*, [1907] 2 Ch. 557. And see Simpson on Infants, 4th ed., p. 98. A guardian may be appointed of children adopted under an adoption order as in the case of natural children : Adoption of Children Act, 1926, s. 5. As to the powers of guardians, see 51 Sol. J. 5 ; and generally on guardianship, maintenance and education of infants, see Seton, 7th ed., 996. Where the Public Trustee accepts a trust, he may also accept the office of guardian to any infant beneficiary : P. T. Rules, 1912, r. 6. Guardians may now be appointed by a soldier's will : Wills (Soldiers and Sailors) Act, 1918, s. 4.

Public Trustee.

(a) The incidence of legacy duty payable in respect of a specific legacy is upon the legatee : Legacy Duty Act, 1796 (36 Geo. 3, c. 52), ss. 6, 24, unless the legacy is given free of duty : *Re Johnston*, 26 Ch. D. 538 ; *Re Townend*, [1914] W. N. 145. If, therefore, it is intended that this duty shall be thrown on the general personal estate, say at the end of each specific bequest, “free of legacy duty,” or insert the general form, *post*, p. 768 f. 37. As to the 1 per cent. legacy and succession duty payable in the case of a legacy to a husband, wife or child, see Fin. (1909-10) Act, 1910, s. 58 ; *Re Waller*, [1916] 1 Ch. 153.

Legacy duty.

The proportionate part of estate duty attributable to a specific legacy is a testamentary expense and payable as such out of residue : *Re Bourne*, [1893] 1 Ch. 188 ; *Re Webber*, [1896] 1 Ch. 914 ; *Re Culverhouse*, [1896] 2 Ch. 251, or any other fund provided for the purpose : *Re Clemow*, [1900] 2 Ch. 182 ; *Re Fearnside*, [1903] 1 Ch. 250 ; *Re Scott*, [1916] 2 Ch. 268, 276 (chattels in foreign country) ; to the exoneration of the specific legacy. As to the exemption from legacy, succession, and estate duty until sale, of

Estate duty.

Furniture and personal effects. Full form (b). (i.) All my household furniture (c), clocks, watches, jewels, trinkets, personal ornaments, & wear and apparel, [except lace & furs], plate & plated articles, linen, china, glass, books, [except books

Duties on works of national interests. works of national, scientific, historic or artistic interest, see *Fin. Act, 1896, s. 20*; *Fin. (1909-10) Act, 1910, ss. 63, 96*; and as to the incidence of the postponed duties on a subsequent sale, see *Re Scott, [1916] 2 Ch. 268*.

Costs of specific legacies. Costs incurred in putting a specific legatee in actual possession of his legacy after assent, such as costs of transfer of shares and mortgages or the costs of bringing chattels from abroad, not being testamentary expenses, must be borne by the legatee; *Re Scott, [1915] 1 Ch. 592*; *Re Grosvenor, [1916] 2 Ch. 375*. But see *Re Hewett, 90 L. J. (Ch.) 126*, and as to the cost of ordinary packing, see *Re Scott, [1915] 1 Ch. at p. 610*; and where the estate is insufficient, see *Re Sivewright, [1922] W. N. 338*; *Re Leach, [1923] 1 Ch. 161*. The cost of the upkeep of an immediate specific legacy until assented to also falls upon the legatee; *Re Pearce, [1909] 1 Ch. 819*; but the upkeep of a contingent specific legacy, so bequeathed as not to carry intermediate income, must, until the happening of the contingency, be borne by residue; *Re Eyre, [1917] 1 Ch. 351*.

(b) In framing class descriptions of articles to be specifically bequeathed, words of extended meaning if not expressly limited or controlled by the context may have the effect of including in the specific bequest property intended to fall into residue. There is always the danger, on the other hand, of so limiting the extended meaning as to exclude from the specific gift articles intended to pass by it. It has accordingly been the practice to employ some such form of general words as appears in the text. These words are descriptive of four more or less distinct classes of articles from among the testator's effects, viz. (1) ornaments of the person; (2) furniture and ornaments of the house including some things such as books which are not strictly described as furniture: see *Kelly v. Powlet, Ambl. 605*; *Re Baroness Zouche, [1919] 2 Ch. 178*; (3) consumable stores (not ordinarily classed and not strictly described as furniture, *Porter v. Tournay, 3 Ves. 311*); and (4) other things forming part of the testator's establishment, such as carriages, motors and garden and farm stock and implements.

"Personal chattels." The definition of "personal chattels" in form 2 of Part I. of the Statutory Will Forms, 1925, which may be applied generally or by specific reference does not help to avoid the difficulties inseparable from class descriptions.

Although "furniture" will not pass articles of the third or fourth class, and "household furniture and effects" will not pass jewellery: *Northey v. Paxton, 60 L. T. 30*; *Re Hammersley, 81 L. T. 150*; the latter expression or "household effects" is sufficiently wide to pass all articles usually specified as constituting the second, third and fourth classes; see *Cole v. Fitzgerald, 3 Russ. 301* (wine, books, lathes, &c.); *Re Bourne, 58 L. T. 537* (wine); *Re Hammersley, sup.* (carriages, horses and pictures); *Re Howe, 1908 W. N. 223*; *Re Ashburnham, 107 L. T. 601*; *Re Sivewright, [1922] W. N. 338* (motor cars); *Re Fortlage, 60 Sol. J. 527*; *Re Masson, 61 Sol. J. 491* (stamp collections). See also *Re White, [1916] 1 Ch. 172*, where it was held that "furniture . . . and all other articles of personal, domestic, or household use or ornament" included a motor-car.

(c) As to the application of the *ejusdem generis* rule to a gift of "furniture,

of account], manuscripts (*d*), pictures, drawings, etchings, engravings, prints, photographs, statuary, musical instrumts, music, pianolas, pianola records, articles of vertu (*e*), [collections (*f*)], wines, liquors & consumable stores (*g*) & provons, horses, carts, carriages, motor-cars, carriage & motor accessories, cycles, harness, saddlery, coach-house stable & garage furniture & utensils, plants, garden tools & implements, [farming stock both live & dead] & all other articles of psonal, domestic, or houshd use or ornamt.

- (ii.) All articles and effects of psonal, domestic, or househd [or stable garage or garden] use, ornamt or consumption belonging to me [& not hinbfe orwise effectually disposed of (*i*)]. Personal effects.
A short general form (*h*).
- (iii.) Such articles of furniture or plate & such other articles or effects of domestic or househd use or ornamt as she [he] shl within — calr months from my death select, to a value to be selected. Furniture, &c.
to be selected.

goods and chattels," see *Manton v. Tabois*, 30 Ch. D. 92 ; and see Jarman, 6th ed., 1307. A bequest of furniture will not as a general rule pass tenants' trade fixtures : *Finney v. Grice*, 10 Ch. D. 13 ; *Re Seton-Smith*, [1902] 1 Ch. 717. If intended to be included, they should be expressly mentioned.

(*d*) A gift by the author of manuscripts of unpublished works *primâ facie* passes the copyright : Copyright Act, 1911, s. 5 (2), s. 17 (2).

(*e*) As to the meaning of " articles of vertu," see *Re Baroness Zouche*, [1919] 2 Ch. 178.

(*f*) See *Re Masson*, 61 Sol. J. 676.

(*g*) Consumable stores should of course from their nature be given absolutely, and a specific gift of them for life would be an absolute gift : see 4 Dav. Prec., 3rd ed., 71, note ; Jarman, 6th ed., 1455 ; unless they formed part of the testator's stock-in-trade : *Phillips v. Beal*, 32 Beav. 25 ; *Cockayne v. Harrison*, L. R. 13 Eq. 432 ; in which case the tenant for life must keep up the value of the stock, but is entitled to the increased value as profits ; *Re Powell*, [1921] 1 Ch. 178. As to what are consumable stores within the meaning of the rule, see *Groves v. Wright*, 2 K. & J. at p. 351 ; *Cockayne v. Harrison*, *sup.* ; *Breton v. Mockett*, 9 Ch. D. 95 ; *Re Hall's Will*, 1 Jur. (N.S.) 974. Farming stock and implements are not : *Myers v. Washbrook*, [1901] 1 K. B. 360 ; neither are deer in a park, *Paine v. Warwick (Countess)*, [1914] 2 K. B. 486.

(*h*) As to what passes by this, see Jarman, 6th ed., 1022 *et seq.*, 1308. This short form will be found convenient where specific bequests of particular chattels are made earlier in the will.

(*i*) These words will be inserted where it is intended to create a particular residue. If that is not intended substitute where necessary " except such as are hinbfe mentioned." See *De Trafford v. Tempest*, 21 Beav. 564 ; *Springett v. Jennings*, L. R. 6 Ch., at p. 337 ; *Re Mason*, [1901] 1 Ch. 619, 626 ; and see as to the construction of particular residuary gifts, Jarman, 6th ed., 1052-1054.

not exceed £—, such value in case of dispute to be determined by my exs in such mner as they shl think pper.

Effects in
a house
(a).

(iv.) All the chattels & effects [not hinfbe orwise effectually disposed of (b)] (except money, securities for money (c) & muniments of title) wch shl at my death be in, about, belonging to, enjoyed with, or appropriated to [or ordered for] my house at — or any other house at wch I may reside or “wch shl be my principal residence” at my death or the outbldgs, stables, coach-houses, garage, gardens, or pleasure grounds thof.

Stock or
shares (d).

(v.) All the stk in the Public Funds of the United Kingdom of wch I may be possessed at my death, or, “all my shares in

(a) The only limitation upon the meaning of “chattels & effects” here is contained in the reference to the locality in which they are to be found. If, as frequently happens, they are preceded by an enumeration of other articles such as furniture, books, plate, &c., their full meaning is liable to be further limited to articles *ejusdem generis* with the articles enumerated: see Jarman, 6th ed., 1084; *Northey v. Paxton*, 60 L. T. 30; *Re Miller*, 61 L. T. 365. As to the effect, when the testator has two houses, of moving plate from one to the other, see *Re Earl of Stamford*, 22 T. L. R. 632; 111 L. T. 937. As to temporary absence of articles from the house, see *Re Baroness Zouche*, [1919] 2 Ch. 178, and compare *Re Lea*, 104 L. T. 253.

(b) See *ante*, p. 727, note (i).

(c) *Choses in action*, such as securities for money, do not, generally speaking, pass under a gift of the effects in or contents of a house; *Re Craven*, 100 L. T. 284; *secus*, where the gift is of the contents of a desk, or place where valuables are usually kept; *Re Robson*, [1891] 2 Ch. 559.

(d) As to the ademption of a specific legacy of stock or shares by conversion into other stock or shares, see *Re Slater*, [1907] 1 Ch. 665; *Re Jameson*, [1908] 2 Ch. 111; *Re Clifford*, [1912] 1 Ch. 29; *Re Leeming*, [1912] 1 Ch. 828. The word “shares” will not include debenture stock: *Re Bodman*, [1891] 3 Ch. 135; *Re Humphries*, 60 Sol. J. 105; except where only debenture stock is held: *Re Weeding*, [1896] 2 Ch. 364; but the word “debentures” will do so: *Re Herring*, [1908] 2 Ch. 493. As to the description of investments, see 52 Sol. J. 811. A gift of “all my shares in —” will include shares over which the testator has a general power of appointment: *Re Doherty-Waterhouse*, [1918] 2 Ch. 269. To prevent ademption the following clause should be inserted after a specific gift of stock or shares:—“I declare that if any of the stocks [shares] or securities hrinbfe bequed shl by any means orwise than by a sale by me be converted into moy or into some other form of investmt or secy then the bequest thof shl not be adeemed but shl extend to the moy or other investmt or secy which shl at the time of my death have been substituted therefor or shl in any other way represent the same.”

Proviso
against
ademp-
tion.

As to the conversion of railway securities affected by the Railways Act,

the — company” [together with all interest dividends & income accruing thron resply at my death (e).]

(vi.) The sum of £—— 2½ p.c. Consolidated Stk [pt of a Consols. larger sum of like stk] now standing in my name (a).

(vii.) All the moy wch shl at my death be in my house (b) Ready money. [or standing to the credit of my current or deposit acct at my bankers].

1921, see the schemes approved by the Railways Amalgamation Tribunal under s. 7 (3) of the Act. As to the conversion of the various war loans and bonds, see the War Loan (Exchange of Securities) Rules, 1917, r. 4, and *Re Macartney* (1920), 36 T. L. R. 394. See *Re Sikes*, [1926] W. N. 306, as to the ademption or otherwise of a chattel specifically bequeathed.

(e) The accruing dividend on a specific legacy of stock is apportionable between the testator's estate and the specific legatee unless the testator directs otherwise: *Pollock v. Pollock*, L. R. 18 Eq. 329; *Re Lysaght*, [1898] 1 Ch. 115; *Re Oppenheimer*, [1907] 1 Ch. 399; *Re Muirhead*, [1916] 2 Ch. 181; *Re Edwards*, [1918] 1 Ch. 142. Arrears of dividends on cumulative preference shares declared after the testator's death belong to the legatee and are not apportionable; *Re Wakley*, [1920] 2 Ch. 205; *Re Marjoribanks*, [1923] 2 Ch. 307.

(a) The words “now standing in my name” as applied to stocks, shares or securities, capable of being so described, make the legacy specific, but a legacy of bonds to bearer thus described would be general, *Re Mayne*, [1914] 2 Ch. 115. A legacy of a sum of stock or number of shares without some words to show that the testator is disposing of stock or shares belonging to him will be construed as general, even if the testator had at the date of his will the exact amount bequeathed: *Partridge v. Partridge*, 9 Mod. Rep. 269; *Sibley v. Perry*, 7 Ves. 522; *Macdonald v. Irvine*, 8 Ch. D. 101; *Re Gray*, 36 Ch. D. 205; *Re Curry*, 53 Sol. J. 117; *Re Willcocks*, [1921] 2 Ch. 327; unless the specific nature of the gift is apparent from other parts of the will, *Re Nottage*, [1895] 2 Ch. 657, or the investments bequeathed and belonging to the testator are so particularly enumerated as to make the gift specific, *Re Hawkins*, [1922] 2 Ch. 569.

(b) This includes Post Office money orders: *Re Windsor*, 108 L. T. 947. Money on deposit at a bank is not strictly “ready money” and would not pass as such unless it were in fact available as money on current account: *Re Price*, [1905] 2 Ch. 55; *Re Rodwell*, 57 Sol. J. 284; but money on current or deposit account would pass under the description “moneys owing to me at my death”: *Re Derbyshire*, [1906] 1 Ch. 135. “Money” or “moneys” in its strict legal sense does not include investments of money: *Lowe v. Thomas*, 5 D. & G. M. & G. 315; *Re Gliddon*, [1917] 1 Ch. 174, *Re Taylor*, [1923] 1 Ch. 99; but the context may show that either word is intended to be used in a wider sense or as meaning the whole personal estate: *Legge v. Asgill*, T. & R. 265 n.; *Stocks v. Barré*, Joh. 54; *Re Skillen*, [1916] 1 Ch. 519; *Re Woolley*, [1918] 1 Ch. 33. But it will not pass real estate: *Re Tribe*, 59 Sol. J. 509. Generally as to gifts of money, see Jarman, 6th ed., 1300. Owing to the ambiguity of such words as “money” or “cash,” a bequest of such a kind is unsatisfactory.

Bond
debt (c). (viii.) All the ppal moys & intt weh shl be owing to me at my death on the bond of — & also the sd bond & all the benefit throf.

Mortgage
debt. (ix.) All the ppal moys & intt weh shl be due or owing or accrug due to me at my death on a mtge of the — este, or, “of ppty situate at —, in the parish of —, in the county of —,” or, “of ppty belongg to —,” or *as the case may be*, [if the description of the mtge deed is known, say, “under a mtge, dated, &c.”], & I devise & bequeath all the ppty of whatever tenure [& other ppty] comprised in such mtge Unto the sd —, subjt to the right of redmon subsistg thrin (d).

Business
papers. (x.) All my account books, letters (e), papers, memoranda, & manuscripts, except deeds & documents of title & secs for moy.

Furniture
or other
effects to
wife for
life or
widow-
hood
without
trustees.
No in-
ventory. 2. I beque the use & enjoymt of all my furniture, &c., or *as the case may be*, to my wife —, durg her life [widowhood] she keepg the same pperly insured agst fire, & I declare that after her death [or re-marre] the same shl fall into my residuary este ; And I declare that it shl not be necy to take an inventory throf, & that my exs shl not be concerned to see to the insee throf, or be liable for any loss or damage that may happen thereto from any cause whatsr (f).

Furniture
or other 3. I GIVE all, &c., [except such articles as from their trifling value or perishable nature my trees shl consider unsuitable to be

(c) It may be convenient to appoint the legatee special executor as to the debt ; see *ante*, p. 722, form 6 ; 4 Dav. Prec., 3rd ed., 120, note.

Assent by
executors
to vesting
of mort-
gage
security. (d) By the joint effect of ss. 1 and 3 (1) (ii) of the A. E. Act, 1925, real estate held by way of mortgage or security, but not including money secured or charged on land, devolves on the personal representative of the deceased mortgagee, “notwithstanding any testamentary disposition,” in the same manner as before the Act chattels real devolved on the personal representative from time to time of a deceased person. An assent by the personal representative to the specific legatee will pass the debt and the legal estate in the mortgage term : s. 36. Cf. *Re Culverhouse*, [1896] 2 Ch. 251.

(e) A bequest of letters of which the testator was the recipient passes the right to the possession of the letters, but the copyright remains, until assignment, in the writer or, if he be dead, in his personal representatives : Copyright Act, 1911, s. 5 ; unless in the latter case the letters were published after the death of the writer and before the Act of 1911 came into operation. See *Macmillan & Co. v. Dent*, [1907] 1 Ch. 107.

(f) As to the position of a legal tenant for life of specific chattels bequeathed by way of legal limitations, see *Re Swan*, [1915] 1 Ch. 829. Such an interest in chattels is not affected by the provisions of ss. 1 (1) and 4 (1) of the L. P. Act, 1925.

settled, wch excepted articles I give to my wife absolutely (a)] effects for
to my trees, In trust to permit my wife to have the use & wife for
enjoymt (b) throf durg her life [widowhood], she keepg the life or
same pperly insured against fire & in good repair & preservon, widow-
reasble wear & tear excepted ; & after her death [or re-marre], hood.
Upon trust for — ; And I direct that an inventory of the Inven-
same effects & premes (except as afsd) shl be made in dupli- tory to
cate as soon as may be after my death by my trees at be made.
the expse of my este, & that one copy throf shl be signed by
my trees & kept by my wife, & one copy signed by my wife
& retained by my trees : [And I declare that my trees shl not
be concerned durg the lifetime [widowhood] of my wife to see
to the insurance or preservon of the sd effects & premes, or
any of them, or be liable for any loss or damage that may
happen thereto from any cause whatsr] [And I declare that
my trees may at any time but with the consent in writg of my
wife durg her life [widowhood] sell any pt of the sd effects & Power
premes, & apply the net proceeds either in the pchase of other of sale.
effects of a like nature or by investing the same in any mode of
investmt hby authorised and the effects so pchased or the
investmts so made and the income thof shall be held upon the
same trusts as are hby declared concerning the sd effects &
premes so far as the same are applicable thto].

4. I BEQUE all my furniture, plate, plated articles, books, Furni-
pictures, prints, & other houshd & domestic effects to my trees ture, etc.
upon trust (so long as any child of mine shl be under the age of in trust
21 yrs & unmarried) to permit the same, or any of them, to be for
used & enjoyed by my chln, or any of them, or by any pson or children
psons for their, his, or her benefit, under such restrons & in such to be
manner as my trees may think fit, & to cause such pts (if any) of divided
the sd furniture & effects as may not be so used to be preserved among
& taken care of at the expse of my residy este, & upon further them on
trust, so soon as all my chln shl have attnd the age of 21 yrs their
or married or died under that age, to divide (c) such furniture & attaining
21, or
marrying.

(a) See *Re Smith-Bosanquet*, 53 Sol. J. 430.

(b) This is not confined to personal enjoyment: *Re Williamson*, 94 L. T. 813.

(c) As to the power of persons interested in a moiety or upwards of chattels belonging to them in undivided shares to apply to the Court for an order for division according to a valuation or otherwise, see s. 188 of the L. P. Act, 1925.

effects among such of my chln as shl have attned the age of 21 yrs, or married, or their exs, ads, or assns, as nearly as may be in eql shares, & with an absolute discron as to the mode of effectg such divon, weh shl not be questioned on the ground of any inequality or orwise : AND I DECLARE that my trees may, eir immedly after my death or at any subseqt time or times, with the consent of such of my chln (if any) as shl for the time being have attned the age of 21 yrs, or their respive exs or ads, sell any pt or pts of the sd furniture & effects weh may not appear likely to be of any special value to my chln, or weh it may be inconvenient or expensive to preserve for them, in weh case the proceeds thof shl form pt of my residy psonal este : Provd always that my trees may at any time bfe the afsd period of divon, make over any portion of such furniture & effects to any child of mine who shl have attned the age of 21 yrs or married, as pt of his or her share or expectant share thrin, & also deliver any articles weh may be deemed suitable to any child, notwg that he or she may be a minor ; AND I DIRECT my trees to have inventories prepared of such pts of the sd furniture & effects as they may deliver to my chln or any of them, or to any pson or psons for their respive use, bfe the final divon thof (except such of the same effects as, from their triflg value or perishable nature or for any other reason, my trees may in their uncontrolled discron consider unnecy to include in such inventories) & to cause such inventories to be signed by the psons to whom such furniture & effects shl be delivered : And I give my trees an absolute discron as to the insee of the sd furniture & premes, And I declare that after causg such inventories as afsd to be made, my trees shl not be concerned to see to the custody or preservon of the sd furniture & premes, or be liable for any loss or damage happeng thto.

Release
of debt to
debtor
(a).

5. I RELEASE & forgive to —, or to his repves if he shd die in my lifetime, the sum of £—— now due to me from him on his bond, [or, “on mtge of ppty at, &c.”] or so much throf

Forgive-
ness of
debt.

(a) The forgiveness of a debt is in law a specific legacy : *Re Wedmore*, [1907] 2 Ch. 277 ; and liable to ademption, and to lapse by the death of the legatee in the testator's lifetime (unless this is expressly provided for, as in the text) : *Izon v. Butler*, 2 Price, 34 ; and is chargeable with duty : *Att.-Gen. v. Holbrook*, 3 Y. & J., 114. If the debt has been forgiven before the date of the will, this should be declared, as in form 7, so as possibly to avoid duty. If the debt was forgiven within three years from the testator's death, estate

as may remain owing to me at my death, & all intt for the same, & I direct that the sd bond shl be cancelled & given up to him or them, [or, "that the ppty comprised in such mtge shl be surrendered or released & reconveyed accordingly, discharged from the sd mtge debt & intt, & all claims in respt throf"].

6. I RELEASE & forgive to —, or to his repves if he shd die in my lifetime, all & every ppal sums or sum & intt whatsr, [or, "all intt owing to me at my death on any ppal sums or sum"] wch may be owing from him or them to me at my death on the secy of any bond or bonds, bill or bills, note or notes, or orwise howsr, & I direct that every such bond, bill, note, or other secy shl be released & given up to the sd — or his repves, [or, "& I direct that he or they shl be allowed time for paymt of such ppal sums or sum by yrly instalmts not exceeding £—— each, commeneg at the end of one yr from my death"].

7. I DECLARE that all moys at any time or times advanced or pd by me to or on acct of — were intended by me as gifts or have on or bfe the — day of — been so treated or forgiven by me, & that nothing is now due to me from the sd — in respt of any such advances or paymts, & no claim shl or can be made against him, or if he shl be dead against his este in respt throf.

8. I REQUEST — to examine all my letters, letter-books, & papers, & to destroy such of the same as he shl consider ought not to be preserved, & I declare that it shl be in his entire

Release of all debts owing from legatee.

Variations where the interest only is released, and time given for payment of principal (a). Declaration that sums advanced by testator were gifts, or have been forgiven.

Request to destroy letters, &c. (b).

duty under Fin. Act, 1894, s. 2, (1) (c), and Fin. (1909-10) Act, 1910, s. 59, would be payable in respect of it. The date of the forgiveness, therefore, should be stated. For a provision where a legacy is given in trust for the debtor and his family, see *post*, p. 818, and 4 Dav. Prec., 3rd ed., 108. A debt is extinguished at law by the appointment of the debtor as executor (even though he does not prove the will: *Re Applebee*, [1891] 3 Ch. 422), but in equity the executor as debtor is held to have paid himself as executor, *Re Bourne*, [1906] 1 Ch. 697, in the absence of evidence of the testator's intention to forgive the debt: see *Strong v. Bird*, L. R. 18 Eq. 315; *Re Applebee*, *sup.*; *Re Pink*, [1912] 2 Ch. 528; see 54 Sol. J. 247, and cf. *Re Stewart*, [1908] 2 Ch. 251; *Re Innes*, [1910] 1 Ch. 188; *Re Goff*, 58 Sol. J. 535. For a form preventing the extinction of an executor's debt, see *post*, p., 836 f. 13.

A bare forgiveness of "debts" will be construed as referring to personal loans only where the testator was owed such debts as well as mortgage debts, and sums of loan stock: *Re Neville*, [1925] Ch. 44.

(b) This form would not, of course, prevent the executors from examining the papers if they think fit. If it is wished to prevent this, the papers should be bequeathed and the legatee made special executor as to them: see *ante*, p. 722, f. 6. See Copyright Act, 1911.

Gifts of papers and letters.

discern whether to show or disclose the same or the contents thereof to any other person.

Special power to sell furniture to wife at valuation.

9. I AUTHORISE my executors to sell to my wife at a valuation to be made in such manner as they shall think fit, all or any part of my furniture, plate, & other household effects, & to allow the purchase-money to be paid by instalments or otherwise, with interest at such rate & in such manner as they shall think fit, with or without taking security, & I declare that the purchase-money for the same shall form part of my residuary estate.

Bequest of specific articles coupled with request and reference to a separate paper (d).

10. I GIVE to A., of, &c., or in case he shall die before me, then to B. of, &c., [& in either case free of legacy duty (e)] all my &c. [& all other articles of personal, domestic, or household use or ornament belonging to me] with the request that he will dispose [of such] of the same [as he may not wish to retain for his own benefit] in accordance with any existing or future (f)

Bequest coupled with request and reference to a separate paper.

(d) See *post*, p. 785, note (c). In the common case where the testator or testatrix wishes to parcel out his or her jewellery, furniture, &c., among numerous friends and relatives, the most convenient plan, in order to avoid incorporating this in the will, and to facilitate alterations, is to bequeath the articles, as in the above form, to some person who may be trusted to carry out the intended disposition. As it is important that the bequest should operate in law as an absolute one; see *Re Hetley*, [1902] 2 Ch. 866; it is desirable that the legatee should be some near relative, to save duty. The separate paper containing the desired disposition of the articles, should be signed, but not attested; and can be altered as circumstances require; and it will not have to be incorporated in the probate: *In re Smart*, [1902] P. 238. The testator's wishes or the existence of the letter must not be communicated to the legatee, as so doing might create a secret trust, see Theobald, 7th ed., 73; *Re Gardom*, [1914] 1 Ch. 662; affirmed, [1915] W. N. 216; 59 Sol. J. 599; *Re Wedgwood*, [1915] 1 Ch. 113. Cf. *Re Gardner*, [1920] 2 Ch. 523. Even if the contents of the letter is known to the legatee, no secret trust will be created if the bequest and communication of the contents of the letter can be construed as nothing more than a bargain to carry out the testator's wishes: *Re Falkiner*, [1924] 1 Ch. 88. As to the purposes for which such a letter may be used, see Elph. Introd., 7th ed., 579; *Re Crawshaw*, 43 Ch. D. 615. For a form of bequest made by reference to a separate paper to be incorporated with the will, see *post*, p. 932. As to what will amount to a precatory trust, see *Re Hamilton*, [1895] 2 Ch. 370; *Re Williams*, [1897] 2 Ch. 12; *Att.-Gen. v. Chamberlain*, 90 L. T. 581; *Re Oldfield*, [1904] 1 Ch. 549; *Re Jevons*, 56 Sol. J. 72; and see *Comiskey v. Bowring-Hanbury*, [1905] A. C. 84; *Re Burley*, [1910] 1 Ch. 215; *Re Conolly*, *ib.* 219.

Precatory trust.

(e) See note (a), *ante*, p. 725.

(f) Parol evidence to identify the document referred to will not be admitted unless the document is definitely referred to as existing. As to the words "any existing or future," see *per* COZENS-HARDY, M.R., in *University College of North Wales v. Taylor*, [1908] P., at p. 144.

memorandum written or signed by me and deposited with this my will or left among my papers at my death, but I declare that the foregoing expression of my wishes as to the disposal of the sd articles shl not create any trust or legal obligon even if the same shl be communicated to either of them the sd A., or B., in my lifetime.

11. I GIVE to the Right Hon. Baron — or other the pson who at my death shl actually bear or be entitled to bear the title of Baron — the followg articles [free of duty (*g*)] namely, — And I hope but do not insist that he will make such settlemt or disposition of the sd articles as will secure their devolution at his death as heirlooms with the sd title.

Gift of articles intended to be heirlooms.

12. (i) I BEQUEE free of duty payable in respt throf all the furniture, &c., wch shl at my death be in or about or intended for my sd mansion house at — (all of wch chattels hrby bequed are hrinar referred to as “ the heirlooms ”) to my trees to be held as heirlooms upon trusts correspondg to the trusts hrin declared concerng my sd mansion house.

Bequest of articles to go as heirlooms with mansion house (*h*).

(ii.) A sale of the heirlooms or any of them shl not be made witht an order of the Ct.

(iii.) An inventory of the heirlooms shl forthwith be made & shl from time to time be revised & shl be signed by my trees & also by the pson for the time being entitled to the use & enjoymt of the heirlooms if of full age & the heirlooms shl at all times be pply preserved & the cost of makg & revisg the inventory & of the preservon of the heirlooms shl be pd by the este owner or este owners for the time being of my sd mansion house so long as the same shl be subjt to the trusts of this my will out of the income of the ppty hrby settled with my sd mansion house. My trees shl not except durg such period or periods as they may be such este owners as afsd be bound to see to the insurance custody or preservon of the heirlooms or to interfere in any way in relation thrto other than to require such inventory to be made & signed as afsd & shl not be responsible for any omission neglect or default on the pt of the pson entitled to the use & enjoymt throf or orwise in relation to the insurance or preservon throf but shl nevertheless be at liberty at any time if they shl think fit to interfere for the protection of the heirlooms.

(*g*) See note (*a*), *ante*, p. 725.

(*h*) See L. P. Act, 1925, s. 130 (3) ; S. L. Act, 1925, s. 67, and *ante*, p. 647.

Bequest
of sinking
fund
policies to
trustees.

13. (i.) I GIVE to my trees my sinkg fund pols Upon trust to retain the same until they shl resply mature & to pay the annual & other premiums required for keepg the same on foot out of the income of my residuary [psonal] este, & to hold the moys reced in respt of such pols & the proceeds of the sale throf under the power hrinar contained on the trusts hrinar declared concerng the moys forming pt of my residuary [psonal] este, but not so as to increase or multiply charges or powers of charging.

(ii.) If my trees shl sell any léasehd ppty formg pt of my este they may, at their discron, sell either by way of surr to the issuing office or orwise, any such poly or pols weh will mature at or within six calr months bfe or after the expiron of the term for weh the hds so sold shl be held.

SPECIFIC DEVISES (a).

Devise of
freeholds
in fee.

1. I DEVISE All my freehd messe, or tenemt, with the outbldgs & lands belongg to or held with the same, situate, &c. [& commonly known as —], now in the occupon

(a) For devises in strict settlement, see *post*, pp. 837 *et seq.*

Duties on
specifi-
cally
devised
property.

Specifically devised property is chargeable with succession duty: Succession Duty Act, 1853, s. 42; Fin. (1909-10) Act, 1910, s. 56 (1); and a proportionate part of the estate duty: Fin. Act, 1894, s. 9 (1); *Re Countess of Orford*, [1896] 1 Ch. 257; *Berry v. Gaukroger*, [1903] 2 Ch. 116. If desired, therefore, payment of these duties should be directed to be made out of residue, as in f. 25, *post*, p. 744, or some other fund appropriate for the purpose to the exoneration of the specifically devised property: see *Re Pimm*, [1904] 2 Ch. 345; Cf. *Re Cayley*, [1904] 2 Ch. 781, and *post*, p. 789, note (c). The existence of a conditional contract for the sale of property specifically devised does not alter the incidence of estate duty: *Re Marlay*, [1915] 2 Ch. 264. As to the effect of a devise "free from incumbrances," see *Re Nesfield*, [1914] W. N. 161; 59 Sol. J. 44.

Regis-
tered
land.

As to the registration of personal representatives of a deceased proprietor of registered land and their power to dispose of the land by way of assent or appropriation without themselves being registered, see L. R. R. 168-170, and as to the right of a tenant for life or of statutory owners to be registered as proprietor or proprietors of registered land settled by will, see L. R. Act, 1925, s. 92 and L. R. R. 133.

Liabili-
ties in
respect of
land
subject to
leases.

Where the land is subject to a lease, and the testator is at his death liable to expend money on the property, the question whether the liability is to be borne by the specifically devised property or by the general estate depends on whether or not it is one which is incident to the relation of landlord and tenant: *Eccles v. Mills*, [1898] A. C. 360; *Re Hughes*, [1913] 2 Ch. 491.

of —, with the appurts throf (b), to A., of, &c., in fee simple.

2. I DEVISE & bequeath all the ppty of wch I am tenant in tail in posson at my death [under a settlemt or trust instrumt dated, &c., & made, &c., or under the will dated, &c., & proved, &c., of X. who died on the — day of —] to — in fee simple & for all the residue of the sevl terms for wch the same are resply held & absolutely accordg to the nature & tenure throf.

Devise and bequest of entailed interest (c).

3. I DEVISE & bequeath All my freehd, & leasehd messes, lands, & tenemts, situate & being in the sevl parishes of, &c., or elsewhere, in the Counties of, &c., or, "in the sevl parishes & places followg, that is to say, &c." to A., of, &c., in fee simple & for all the residue of the sevl terms for wch the same are resply held accordg to the nature & tenure throf.

Devise and bequest of real and leasehold estates in certain counties, &c.

4. I DEVISE All, &c., *Parcels*, with the appurts throf, to A. [the wife of B.], of, &c., in fee simple, but so that durg [her psnt or any future] coverture the same shl be witht power of anticipation.

Devise to a woman with restraint on anticipation (d). Devise on trust for

5. I DEVISE All, &c., *Parcels*, To my trees on trust to sell

Real estate comprised in lapsed or void specific devises is included in the residuary devise, if any: Wills Act, 1837, s. 25. As to what is a residuary devise, see *Mason v. Ogden*, [1903] A. C. 1.

A specific devise of real estate identified either by reference to its locality or to the instrument in which it is comprised will pass an interest in an undivided share in the proceeds of sale so long as the land remains unsold: *Re Lowman*, [1895] 2 Ch. 348.

Un-divided share in proceeds of sale. General words.

(b) If the testator has other property adjoining, say, "with the rights, easemts, & appurts thereto belongg or reputed to belong or therewith held or enjoyed;" cf. *Milner's Safe Co. v. G. N. & City Rly. Co.*, [1907] 1 Ch. 208; *Schwann v. Cotton*, [1916] 2 Ch. 459. See clause annexing easements generally to specifically devised property, *post*, p. 744, f. 24.

Section 62 of the L. P. Act, 1925, implying the usual general words in conveyances does not affect wills, as a will is not a "conveyance" within the meaning of the Act: see s. 205 (1) (ii). A devise of land therefore does not pass easements by implication except where they are continuous or necessary to the enjoyment of the land in the state in which it is devised: see *Polden v. Bastard*, L. R. 1 Q. B. 156; *Watts v. Kelson*, L. R. 6 Ch. 166; *Taws v. Knowles*, [1891] 2 Q. B. at pp. 569, 570; *Phillips v. Low*, [1892] 1 Ch. 47.

If so intended add bequest of rents as at p. 745, f. 26.

(c) See L. P. Act, 1925, s. 176.

(d) As to gifts to married women under the M. W. P. Acts, see *ante*, p. 515, note. The restraint on anticipation may be effectually annexed to a devise in fee: *Baggett v. Meux*, 1 Phil. 627.

sale for children of testator or another deceased at 21.

the same with power to postpone such sale until any time at their discretion & to hold the net proceeds of sale & the nett rents & profits until sale on trust for such of my child or child, [the child or child of ——— deceased (e), who shall be living at my death], who being male attain the age of twenty-one years or being female attain that age or marry, if more than one in equal shares as tenants in common absolutely.

Proviso that trust for a class of children shall include child dying before testator leaving issue (a).

6. IF ANY child of mine [of the said ———] shall die in my life time leaving issue surviving me, the trust hereinbefore declared in favour of my child [the child of the said ———] shall take effect in the same manner as if the child so dying had survived me, & died immediately after me, & so that the share or shares of the said proceeds of sale bequeathed to him or her, or which he or she would have taken if surviving me, shall devolve upon his or her personal representatives as part of his or her estate accordingly.

Devise with provision against lapse in case of devisee leaving issue (b).

7. I DEVISE All, &c., *Parcels*, To A., in fee simple, if he shall survive me, or die in my lifetime leaving issue surviving me, & so that in the latter case the said property shall devolve upon his personal representatives or devisees, as part of his estate, in the same manner as if he had survived me & died immediately after me.

8. IF THE said ——— shall die in my lifetime leaving issue living at my death, the devise hereinbefore made to him shall take effect in

Proviso against

(e) This form is not adapted to a trust for the children of another living person who takes no life interest. If the gift is to be to the children of another person, to whom a life interest is previously given, in remainder after his death, the trust, following the rule of construction adopted in such cases, should be for "the child or child of the said ——— who shall be living at my death or born afterwards who," &c. See *Jarman*, 6th ed., 1667. A child *en ventre sa mère* is considered to be "living," and where such a construction would benefit the child, such a child is considered to be "born": *Hawkins on Wills*, 3rd ed., 100; *Re Salaman*, [1908] 1 Ch. 4. Such a devise will under s. 175 of the L. P. Act, 1925, carry the intermediate income, subject to the statutory provision as to accumulations (as to which see ss. 164, 165), except so far as such income or any part thereof, is otherwise disposed of.

(a) This provision is intended to operate in a similar manner to s. 33 of the Wills Act, 1837 (which does not apply to gifts to classes), so as to make the property devolve as part of the beneficiary's estate: see *post*, p. 759, note (b), and *post*, p. 802, note (a). As to whether the presumptive share of a possible member of the class dying in the testator's life-time would be effectively dealt with if the substitutionary gift in the latter part of this clause were omitted, see *Re Gresley*, [1911] 1 Ch. 358; explained in *Re Greenwood*, [1912] 1 Ch. 392; and cf. *Re Clunies Ross*, 56 Sol. J. 252; *Re Smith*, [1916] 1 Ch. 523, 527, *affd.* 2 Ch. 368; *Re Young*, [1920] 2 Ch. 427.

(b) See *post*, p. 759, note (b).

favour of the person or persons who would have become entitled thereto if he had survived me & died immediately after me.

9. I DEVISE All, &c., *Parcels*, To A., in fee simple; but if he should die in my lifetime, then I devise the same premises To MY TREES on trust to sell the same with powers to postpone such sale until any time at their discretion & to hold the net proceeds of sale & the net rents & profits until sale IN TRUST for the child or child (if any) of the said A., living at my death, absolutely, if more than one in equal shares as tenants in common.

10. I DEVISE All, &c., *Parcels*, to my trees, IN TRUST for infant in fee simple, but if he should die in my lifetime [without leaving issue living at my death (e)] or should survive me & afterwards die under the age of twenty-one years without leaving issue living at his death then, IN TRUST for X.

11. I DEVISE All, &c., *Parcels*, To my trees in fee simple (f), IN TRUST for A., absolutely, & if he die without leaving issue living at his death, To, &c.

12. I DEVISE All, &c., *Parcels*, IN TRUST for my wife, during her life [widowhood] (h), & from & after her death [or future

lapse in case of devisee leaving issue (c).

Devise to a person or his children by substitution.

Devise for an infant with gift over on death under age without issue (d).

Devise with gift over on death at any age without issue (g).

Devise to wife for

(c) See *post* p. 759, note (b).

(d) A legal estate in land cannot be devised directly to an infant: L. P. Act, 1925, s. 1 (6). Until a principal vesting instrument has been executed the legal estate will remain vested in the personal representatives who have all the powers of a tenant for life, and of the trustees of the settlement in respect of it: S. L. Act, 1925, s. 26. The personal representatives are the trustees for the purposes of the Act: s. 30 (3). As to the trustees' powers of management: see s. 102. For a power of advancement out of land, see *post*, p. 874, clause 11.

(e) The words in brackets will be proper where the infant is a child of the testator, and it is intended that s. 33 of the Wills Act, 1837, shall apply.

(f) The trustees will not acquire any legal estate under this gift. The beneficiary is a person having the powers of a tenant for life under s. 20 (1) (ii) of the S. L. Act, 1925, and as such can call for the legal estate in fee to be assured to him by a vesting assent: ss. 6 and 8. The personal representatives will be the trustees for the purposes of the S. L. Act, under s. 30 (3), without being so constituted by the will.

(g) As to equitable executory limitations of this kind, see the L. P. Act, 1925, s. 134; and see *Re Parry*, 31 Ch. D. 130, for a case under the old law of a gift over of realty to the heir-at-law of a devisee in fee on his death without leaving issue. As to a similar gift of personalty, see *Re Ball*, 40 Ch. D. 11; *Barkworth v. Barkworth*, 75 L. J. Ch. 754. A tenant in fee with an executory limitation over is not impeachable for waste: *Re Hanbury's S. E.*, [1913] 2 Ch. 357.

(h) For variations imposing the obligation on the tenant for life to keep in repair, &c., see *post*, pp. 745 *et seq.*; and see *Blackmore v. White*, [1899] 1 Q. B. 293.

life, with remain-
der to
two sons
jointly.
Devise of
house and
furniture
for use of
unmar-
ried
daughters
for
limited
period (a).

Devise of
house and
furniture
in trust
for
daughter
remain-
ing un-
married
(c).

marre] IN TRUST for my sons, D. & E., in fee simple as joint tenants.

13. SUCH OF my daurs as shl for the time being be spinsters shl be entitled to the psonal use, occupon & enjoymt, free from [rent,] rates & taxes for the period of twelve calr months after my death (if they shl resply desire the same) of my residence situate, &c., or any other dwelling-house in wch I may reside at my death, togr with the stables, coachhouse, garage, gardens, pleasure-grounds, & appurts thereto belongg or held therewith, & the furniture & effects of domestic, stable, garage, or garden use or ornamt wch at my death shl be in, about, belongg to, or enjoyed with the same or appropriated thereto, they or she keepg the same in good tenantable repair & condon (b), & insured against loss or damage by fire, but witht liability for fair wear & tear: AND SUBJT thereto I devise & bequeath the same ppty, effects & premes unto my son K., absolutely, or, "I declare that the same ppty, effects & premes shl form pt of my residuary real & psonal este, & shl pass by the genl devise & bequest throf hrinar contained."

14. I DEVISE & BEQUEATH my freehd house at — known as — togr with the stables, coachhouse, garage, pleasure-grounds, & appurts thto belongg or held therewith, & the furniture & effects of domestic, stable, or garden use or ornamt wch at my death shl be in, about, belongg to, or enjoyed with the same or appropriated thereto, to my trees hrinbfe named UPON TRUST that my trees shl permit such one or more of my daurs as shall for the time being be living & not have married to use, occupy, & enjoy the same, she or they paying the rates & taxes & keepg the same in good tenantable repair & condon (b) & insured against loss or damage by fire in the

(a) The daughters who are entitled to and actually benefit by this devise will be persons having the powers of a tenant for life: S. L. Act, 1925, s. 20 (1) (ii), and as such entitled to a principal vesting instrument in their favour.

(b) If there is any likelihood of the property not being in good repair at the testator's death, say, "in such repair & condon as the same shl be in at my death"; see *Gregg v. Coates*, 23 Beav. 33; *Re Bradbrook*, 56 L. T. 106. No Statute of Limitations applies to an action by a remainderman against the executors of a tenant for life who has let the property fall into disrepair: *Jay v. Jay*, [1924] 1 K. B. 826.

(c) See note (a), *supra*.

names of my trees, who sh^l lay out any moys reeed in respect of any such insurce in replacing the ppty destroyed or damaged or in pchasing similar ppty to be held upon & subj^t to the same trusts & provons as the ppty destroyed or damaged & subj^t thereto, &c. *as in f. 13.*

15. I DEVISE ALL, &c., *Parcels*, UNTO my wife, in fee simple, & I request (but do not insist) that she will within — calr months after my death cause all the sd ppty to be vested in some body corporate or body of individuals IN TRUST to raise out of the income throf the yrly sum of £—— & pay the same at Christmas in each yr to the Vicar & Churchwardens of the Parish of, &c., to be distributed by them at their discron amongst poor deserving inhabitants of the sd Parish & subj^t thereto to stand seised & possessed of the sd ppty IN TRUST for augmenting the endowmt of the Vicarage of the sd Parish, And if my wife sh^l comply with my request hrinbfe expressed (but not orwise) then I devise to her all, &c., *other ppty.*

Devise coupled with request to provide for poor of parish and endowment of Vicarage. Further devise conditional on fulfilment of request.

16. I DEVISE my mansion-house of — at —, with the stables, outbldgs, gardens, grounds, & lands occupied by me therewith, to my trees IN TRUST for A., of, &c., until he sh^l die or sh^l fail to make the same his ppal residee, he keepg the same in repair & insured against fire; And from & after his death, or failing to make the sd premes his ppal residence, I devise the same, &c.

Devise for life, subject to condition of residence (d).

(d) An estate in fee simple liable to be divested on a contingency is not a legal estate: L. P. Act, 1925, s. 1 (1). A devise in the form in the text creates a settlement: S. L. Act, 1925, s. 1 (1) (ii) (b), and the person entitled to such an estate has the powers of a tenant for life under s. 20 (1) (ii) of that Act, and is entitled to a vesting assent in his favour. The executors will be trustees for the purposes of the S. L. Act: s. 30 (3).

A condition in this form would probably be binding on an infant: *Partridge v. Partridge*, [1894] 1 Ch. 351. As to what amounts to residence, see *Re Moir*, 25 Ch. D. 605; *Re Wright*, [1907] 1 Ch. 231; *Re Adair*, [1909] 1 Ir. R. 311. The statutory powers of a tenant for life are exercisable notwithstanding such a condition; see *ante*, p. 649. This might be avoided by a devise to trustees in trust to grant a lease to the beneficiary at a nominal rent with a covenant not to assign or under-let. A condition which involves a married woman living apart from her husband is invalid: *Wilkinson v. Wilkinson*, L. R. 12 Eq. 604. An option to occupy and enjoy, when exercised, gives to the person who exercises it the powers of a tenant for life under the S. L. Act: *Re Gibbons*, [1920] 1 Ch. 372; cf. *Re Anderson*, *ib.*, 175.

Conditions of residence.

Devise of
advow-
son (e).

17. I DEVISE my advowson of — to my trees, herinbfe named in fee simple, UPON TRUST, that my trees if & so often as a vacancy in the sd livg shl occur bfe the sd advowson shl be sold under the trusts hrinar declared concerng the same, shl present some duly qualified pson thereto ; & I request witht imposing any obligon on my trees that if, on the occurence of any such vacancy, my son — shl be duly qualified & willg to hold such livg, & shl, in the judgmt of my trees, be a fit & pper pson to hold the same, my trees shl present him thereto ; & upon further trust, that durg the incumbency of my sd son, or durg the incumbency of any other pson with the consent of my sd son if livg, my trees shl if they can lawfully do so sell the same advowson, & hold & apply the net proceeds throf in the same mner & upon the same trusts as if the sd advowson had been comprised in the devise of my residuary real este hrinar contained.

Devise
subject to
legacies,
annuities,
duties,
&c. (f).

18. I DEVISE All, &c., *Parcels To* —, in fee simple, subjt to & charged with the paymt to — of a legacy of £—— with intt thron at the rate of £—— p.c. p.a. from my death, & a legacy, &c., [*or*, “of an annuity of £—— durg his life to commence from my death, & to be payable, &c.” *see* p. 748, f. 1, *or*, “subjt nevertheless to the paymt of the sevl annuities, or rent-charges, legacies & duties hby charged upon & made payable out of the same premes, & to all powers & remedies for recoverg & raisg the same resply”].

Devise
subject to
mortgage
(a).

19. I DEVISE All, &c., *Parcels To* —, in fee simple, subjt to & charged (in exoneron of my psonal este & my other real

(e) See other forms, 4 Dav. Prec., 3rd ed., 547. The trusts are not affected by the Benefices Act, 1898, or by The Benefices Act, 1898 ; (Amendment) Measure, 1923, until two vacancies have occurred after the passing of the Measure. A sale after such occurrence is invalid. As to Roman Catholics, see 3 Jac. 1, c. 5, ss. 18–21 ; 1 Will. & Mary, c. 26 ; 12 Anne, stat. 2, c. 14 ; 11 Geo. 2, c. 17, s. 5. The form in the text is not a charitable trust : *Re Church Patronage Trust*, [1904] 2 Ch. 643, and the cases there cited. No estate duty is payable on advowsons : *Att.-Gen. v. Peek*, [1913] 2 K. B. 487.

(f) If the charge is extended to debts, funeral and testamentary expenses, and it is intended to exonerate the general personal estate therefrom, this should be effected by express words exonerating the personal estate : *Kilford v. Blaney*, 31 Ch. D. 56 ; *Re Banks*, [1905] 1 Ch. 547. This rule applies also to realty outside the jurisdiction ; *Re Smith*, [1913] 2 Ch. 216.

Incidence
of

(a) The A. E. Act, 1925, replaces and enlarges the provisions of Locke King's Acts, 1854 to 1877. By s. 35 (1) of that Act property, which

este (if any) charged therewith), with the paymt of all ppal moys & intt specifically charged thron by any mtge or mtges, & any other charges & incumbees affectg the same at my death.

20. All sums specifically charged on the ——— Estes, or any pt throf at my death, shl as betn the psons takg the same Estes under this my will, & the psons interested in my psonal este & my other real este under this my will, or any codl hto, be considered as exclusively charged on the sd ——— Estes, in exoneron of my psonalty & other real este.

21. I DEVISE All, &c., *Parcels To A.*, of, &c., in fee simple, free & discharged from all the ppal moys & intt charged thron by a mtge dated, &c., wch I declare shl be pd out of my psonal este in exoneron of the sd ppty.

22. I DEVISE & bequeath to ———, the messe, &c., wch is held by me under a lease dated, &c., but of wch I have lately contracted for the pchase of the freehd: And I direct that if the pchase of the freehd of the same premes shl not have been completed in my lifetime, all pchase-moy for the same & all costs & expses incident to the complon of such pchase shl be pd out of my genl psonal este.

Declara-
tion that
specific-
ally
devised
estates
shall be
taken
subject to
charges.

Devise
free from
mortgage
debt.

Devise
of free-
holds con-
tracted
to be pur-
chased.

Purchase-
money,
&c., to
come out
of per-
sonal
estate (b).
charges
on pro-
perty dis-
posed of
by will.

by s. 55 (1) (xvii) includes a thing in action and any interest in real and personal property, which is subject to a legal mortgage or equitable charge or otherwise incumbered, including a lien for unpaid purchase-money, and is disposed of by a will which does not contain a contrary or other intention, passes to the beneficiary subject to the incumbrance affecting it. The sub-section extends to property subject to a general power of appointment and to entailed interests disposed of by will. By sub-s. (2) of the same section it is provided that a general direction to pay debts out of personal estate or residue or a charge of debts on any such estate is not a contrary or other intention within sub-s. (1). A collective devise to the same set of persons throws the aggregate charges on to the aggregate lands in exoneration of the general personal estate: *Re Lord Kensington*, [1902] 1 Ch. 203. But separate charges on real estate descended are not to be aggregated in exoneration of the general personal estate: *Re Holt*, 60 Sol. J. 640. As to what was a "contrary or other intention" within the meaning of the repealed Acts, see *Pembroke v. Friend*, 1 J. & H., 132; *Re Smith*, 33 Ch. D. 195; *Re Fleck*, 37 Ch. D. 677; *Re Campbell*, [1893] 2 Ch. 206; *Re Valpy*, [1906] 1 Ch. 531; *Re Birch*, [1909] 1 Ch. 787; *Re Major* [1914] 1 Ch. 278. The intention as to how a mortgage debt or any other charge on specifically devised property is to be borne, should always be expressly stated and not left to implication.

(b) This clause is intended to meet the case of *Re Kershaw*, 37 Ch. D. 674, see last note, and see Prec. XXXVIII., on p. 930, *infra*. See *Re Rix*, [1921] W. N. 140.

Devise
on trusts
of settle-
ment (c).

23. I DEVISE all, &c., *Parcels*, to my trees *hrinbfe* named, Upon the trusts, & subj't to the powers & provons declared & contained by & in a settlem't [trust instrum't] dated, &c., & made, &c., concerning the freehd ppty thereby settled, or such of the same trusts, powers, & provons as shl at my death be subsistg or capable of takg effect (c), but not so as to increase or multiply charges or powers of charging (d).

Clause
annexing
ease-
ments to
specific-
ally de-
vised pro-
perties
(a).

24. I DECLARE that as to all ways, paths, passages, water-courses, & other conveniences of the nature of easemts wch at my death shl be used or enjoyed with or for the benefit or accom-
modon of any of the ppty *hrinbfe* devised, or the tenants or occupiers throf, in, over or upon any pt or pts of the sd devised ppty, the like right of user throf resp'ly for the pposes & to the extent to wch the same shl be so enjoyed shl be annexed as easemts to the respective premes with wch the same shl be so used & enjoyed resp'ly, AND I DEVISE such respective easemts accordingly with & so that the same may be annexed to & follow the destinon under this my will of such respective premes to the intent that the conveniences & advantages in the nature of easemts wch at my death shl be in use as bet'n the different portions of the sd devised premes, & conducg to the better & more convenient enjoymt & occupon throf resp'ly, may be perpetuated on the footg of legal rights & easemts for the use & benefit of the sevl psons interested under this my will & their respective tenants, & if any question shl arise as to the easemts or rights existg by virtue of the directions lastly *hrinbfe* contd, I empower my exs by deed (b) to define & determine the same, & so that such determinon shl be conclusive & bindg on all psons interested.

Direction
that
devise

25. I DIRECT that all duties leviab' at my death in respect of the foregoing devise [any devise *hrinbfe* contd] or in respect

(c) *I.e.*, capable by law of taking effect: *Re Finch & Chew*, [1903] 2 Ch. 486. As to the danger of including trusts which may be declared in the future, by the addition of such words as "mesne assurances," see *Re Fane*, [1913] 1 Ch. 404.

(d) A devise by reference to another instrument is to be construed as though the trusts, &c., were re-written in the will, and may therefore have the effect of multiplying charges: *Re Beaumont*, [1913] 1 Ch. 325.

(e) See S. L. Act, 1925, s. 91.

(a) See *ante*, p. 737, note (b), and L. P. Act, 1925, s. 187.

(b) *I.e.*, the deed of assent.

of the ppty comprised thrin shall be paid as part of my testamentary expenses out of my general personal este.

shall be free of duty (c).

26. I BEQUEATH to — all rents & profits wch shl be due or accrug due to me at my death from or in respt of the estes & ppty situate, &c., hrinbfe devised to the sd —, or, “ of wch I am tenant for life,” subjt to the paymt throuth of all rates, taxes, outgoings, & expses wch may be due or owing or accrug due at my death in respt of or wch in the ordinary course of managment may be pperly chargeable against the same estes & ppty (e).

Bequest of rents of devised properties due to testator at his death (d).

BEQUESTS OF LEASEHOLDS, &c. (f).

1. I GIVE my leasehd messe, with the gardens, pleasure-grounds & lands held therewith, situate at — [or, “ my leasehd messe, with the outbldgs, garage, & stablg belongg thereto, situate & being No. —, in — Street,”] in the Parish of —, in the county of —, with the appurths throf (g), to A., of, &c., [the wife of —] for all the residue wch shl be unexpired at my death of the term for wch the same premes

Specific bequest of leaseholds.

(c) See *ante*, p. 736, note (a). This direction should be limited as in the text to duties leviable at the testator's death.

(d) This bequest of arrears of rent and accruing rents (subject to outgoings) to the specific devisee of the estate, or to the next remainderman where the testator is only tenant for life, would generally accord with the intention, and is useful, as it saves the necessity for any apportionment of the rents, &c. As to what passes by this gift, see *Re Ford*, [1911] 1 Ch. 455, and as to what outgoings ought to be deducted under such a clause, see *Re Duke of Cleveland*, [1894] 1 Ch. 164; and see 38 Sol. J. 91.

Bequest of rents of devised properties due to testator at his death (d).

(e) Without these words the bequest would carry the rents without deduction: *Re Ford*, *sup*.

(f) By s. 1 of the Succession Duty Act, 1853, leaseholds are included in the definition of “ real property ” contained in the Act. In the case, therefore, of a bequest of leaseholds the same question arises as to the desirability of providing for the payment of succession duty as in the case of a devise of freeholds: see *ante*, p. 736, note (a); and *post*, p. 789, note (c).

Succession duty.

As leaseholds pass to the executor as such, the proportionate part of estate duty attributable to specifically bequeathed leaseholds is primarily payable out of the testator's general personal estate: see *ante*, p. 725, note (a).

Estate duty.

As to a bequest of leasehold property subject to a mortgage or to unpaid purchase-money, see *ante*, p. 742, note (a).

(g) If the testator has other property adjoining, add the words in note (b), *ante*, p. 737.

are held, subj't to the rent reserved by & the covts & condons contd in the lease under wch the sd premes are held, or, "the sd —, his exs, ads, & assns, payg the rent reserved by, & pformg & observg at his & their own expse, the covts (*h*) & condons contained in the lease under wch the sd premes are held, & keepg my general este indemnified in respt throf," [but so that durg coverture the same shl be witht power of anticipon].

The same to trustees.

2. I GIVE my leasehd messe, &c., as in last form, to my trees for all the residue, &c., & subj't to the rent, &c., as in last form, Upon trust out of the rents & profits throf to pay the rent reserved by the sd lease, & the expses of [keepg the same insured & in good repair & orwise] & all other outgoings (*a*) in respt of the covts of the sd lease [includg the costs of collection & surveyor's charges] & upon further trust, &c.

Bequest of leasehold

3. I GIVE to A., of, &c., absolutely, my leasehd house

As to liability for dilapidations.

(*h*) In the absence of directions to the contrary an absolute legatee of leaseholds is, as between himself and other persons claiming under a will, liable in respect of dilapidations existing at the testator's death and occurring subsequently : *Hickling v. Boyer*, 3 Mac. & G. at p. 643 ; *Hawkins v. Hawkins*, 13 Ch. D. 470 ; but if the gift is for life only, as between himself and the testator's estate the tenant for life is not liable for dilapidations existing at the testator's death : *Harris v. Poyner*, 1 Drew. 174 ; *Re Courtier*, 34 Ch. D. 136 ; *Brereton v. Day*, [1895] 1 Ir. R. 518 ; *Re Smith*, 84 L. T. 835 ; *Re Sutton*, 56 Sol. J. 650 ; though he is liable for further dilapidations occurring during the continuance of his interest : *Re Betty*, [1899] 1 Ch. 821 ; *Re Gjers*, [1899] 2 Ch. 54 ; *Re Parry & Hopkin*, [1900] 1 Ch. 160 ; but see *contra*, *Re Baring*, [1893] 1 Ch. 61 ; *Re Tomlinson*, [1898] 1 Ch. 232. The estate of the tenant for life is not liable to the remainderman in respect of the latter dilapidations ; *Re Cartwright*, 41 Ch. D. 532 ; *Re Parry & Hopkin*, *sup.* ; see also *Withers on Reversions*, 83. Where the primary trusts are to pay the rents and perform the covenants of the lease, a tenant for life who goes into possession after the death of the last surviving trustee, must keep the property in repair in accordance with the covenants of the lease : *Re Field*, [1925] Ch. 636. Where a tenant for life is under liability to repair, no Statute of Limitations applies to an action by a remainderman against the executors of a deceased tenant for life who has not performed his obligation : *Jay v. Jay*, [1924] 1 K. B. 826.

Incidence of outgoings.

(*a*) As to the incidence, as between tenant for life and remainderman, of current outgoings, see *Re Redding*, [1897] 1 Ch. 876 ; *Re Thomas*, [1900] 1 Ch. 319 ; and of the cost of repairs generally and of complying with notices under the Public Health (London) Act, 1891, and the London Building Act, 1894, in particular, see *Re Copland*, [1900] 1 Ch. 326 ; *Re Farnham*, [1904] 2 Ch. 561, and cases there cited.

situate, &c., whrin I now reside (b), for all my term & intt thrin, togr with all my furniture, fixtures, & househd effects in, about, or belong to the same (c). house and furniture.

4. I GIVE to my trees my leasehd messe, &c. (d), if my term thrin shl so long last, togr with all the furniture, fixtures, &c., as in the last form, IN TRUST for my wife durg her life [widowhood], she paying the rent, rates, taxes, & outgoings for the time being payable in respt of the sd messe & premes & keepg the same pperly insured against fire & in good repair & duly pformg & observg all the lessee's covts & condons contained in the lease under wch the sd leasehd premes are held (f), & also keepg the sd furniture & other effects insured & in a pper state of preservon; & it is my desire that my trees shl see to the insurce of the sd messe, furniture & effects, but witht being in any way responsible for any omission so to do, or for any loss or damage happeng thereto from any cause whatsr; & from & after the death [or remarre] of my wife, IN TRUST for my son — absolutely. The same to wife for life or widowhood, with remainder over (e).

5. I GIVE to my trees IN TRUST for A., of, &c., during his life if my term thrin shl so long last, an improved leasehd ground-rent issuing out of certain tenemts & ppty situate in, &c., wch I pchased of —; & I direct that after the death of the sd A. the same leasehd premes shl sink into & become pt of my general residuary este, & pass under the bequest throf hrinar contained. Bequest of leasehold ground-rent for life.

6. I GIVE ALL, &c., to my trees, Upon trust to receive the rents & profits throf, & after paying throuth the rent reserved by & Lease holds to trustees

(b) A doubt frequently arises from the insertion of such words as “now in my own occupation,” or other *verba de presenti*, as to whether after-acquired land passes, since s. 24 of the Wills Act, 1837, making the will speak from the death, does not apply where a contrary intention is shown: see *Re Champion*, [1893] 1 Ch. 101; *Re Willis*, [1911] 2 Ch. 563. Words referring to present time.

(c) See *Manton v. Tabois*, 30 Ch. D. 92, and *ante*, p. 726, note (c).

(d) Where a testator gave to his wife the lease of the house in which he should be living at his death, and subsequently bought a freehold house, where he resided until his death, the latter was held not to pass under the bequest: *Re Knight*, 34 Ch. D. 518; but in *Saxton v. Saxton*, 13 Ch. D. 359, the freehold reversion, having been purchased after the will, was held on the words of the gift to pass. The intention should be clearly expressed. As to change of house.

(e) The widow will be entitled to a vesting assent assuring the legal term of years to her. The personal representatives are the trustees for the purpose of the S. L. Act, 1925: S. L. Act, 1925, s. 30 (3).

(f) This imposes in equity a personal obligation on the legatee: *Re Loom*, [1910] 2 Ch. 230.

for
married
woman
for life,
&c.

the expse of pformg & observg the covts by the lessee & condons contained in (g) the lease under wch the same premes are held, & all other neey outgoings (if any) & the expse of keepg the same insured against loss or damage by fire & in good repair, to pay the surplus or net rents & profits throf to, *legatee*, the wife of —, or to permit the sd, *legatee*, psonally to occupy & manage the sd premes durg her life, but so that, if & so long as the sd, *legatee*, shl psonally occupy and manage the sd premes she shl keep the same insured and in such good repair as afsd & orwise pform and observe the covts of the sd lease & pay all other necessary outgoings (if any), & my trees shl not incur any liability by reason of her neglecting so to do. And after the death of the sd, *legatee*, my trees shl stand possessed of the same leasehd premes, In trust, &c.

Bequest
of lease-
hold farm
with
farming
stock, &c.

7. I GIVE to — my farm called —, & the farm-house, farm bldgs, & land belongg thereto, as the same are now held by me under a lease from —, togr with the live & dead stk, growg & severed crops & produce, furniture, househd goods & effects, & consumable stores & provons, wch shl at my death be in, upon, about, or belongg to the sd farm, or the sd farm-house, bldgs, & premes.

Direction
that
bequest
shall be
free of
duty (h).

8. I DIRECT that all duty leviabie at my death in respect of the foregoing bequest of leasehold ppty shall be paid as part of my testamentary expenses out of my general personal este.

PROVISIONS RELATING TO BUSINESS.

Bequest
of busi-
ness (a).

1. I BEQUEATH to — the goodwill of my trade or business of —, & the stk-in-trade, machinery, plant, & effects employed thrin or belongg thereto, [togr with the lease of the messe or

(g) The tenant for life cannot, under this clause, require the cost of improvements made in performance of covenants in the lease to be discharged out of capital money: *Re Partington*, [1902] 1 Ch. 711; nor will she be entitled, on selling the leaseholds, to any equivalent for the benefit conferred by it: *Re Simpson*, [1913] 1 Ch. 277.

(h) See *ante*, p. 745, note (f).

Business
settled.

(a) Where a business is bequeathed to successive tenants for life, the question whether losses are to be made good out of capital or out of subsequent profits presents some difficulty: see *Upton v. Brown*, 26 Ch. D. 588 *Gow v. Forster*, *ib.* 672; *Re Hengler*, [1893] 1 Ch. 586; and as to premiums on policies, see *Re Morley*, [1895] 2 Ch. 738. As to the importance of mentioning book-debts, see *Re Deller*, [1888] W. N. 62; and of mentioning bank balance, see *Re Haigh*, 51 Sol. J. 343.

tenemt, shop, manufactory, & bldgs situate at, &c., in wch the sd business is carried on, or used for the pposes throf,] & the benefit of all contracts subsistg in respt of the sd business, & all book debts & moys due to me in respt throf or standg to the credit of my business acct at my bankers at my death, the sd — discharging & indemnifying my general este from all debts & liabilities due or subsistg in respt of the sd business at my death, &, if required by my exs, enterg into a bond or covt at the expse of my general este in that behalf, [*Apptmt of legatee special executor*, p. 722, f. 6.]

2. IN EXERCISE of a power contained in the articles of ptnp of the firm of —, in wch I am a ptner, dated, &c., or any other power wch may at my death enable me in this behalf, I hby introduce my son — as a ptner into the sd firm as from my death durg the remr of the term of the sd ptnp, subjt to the provons of the sd articles or any other agrmt of ptnp wch may be subsistg at my death: And I bequeath to my sd son my share in the capl, stk-in-trade, assets, goodwill, & profits (b) of the sd firm, he indemnifying my general este from all debts & liabilities of the sd firm, [& payg to my exs for the general pposes of this my will my share of the profits of the sd ptnp business & intt on my capl thrin up to the day of my death, as & when the same shl be received by him]: [*Apptmt of son as special exor as to the said share and premises*, &c., p. 722, f. 6.]

Bequest of share in partnership to a son under a power in the articles of partnership.

3. (i.) MY TREES (c) may concur in windg up the businesses of —, now carried on by the firm of —, in wch I am a ptner, or any business in wch I may be a ptner at the time

Power to wind up partnership business.

(b) As to the effect of a gift of the profits of a partnership business alone, see *Re Lawes-Wittewronge*, [1915] 1 Ch. 408.

(c) Where the same persons are not both executors and trustees, some of the powers under this head may be more properly given to the executors. In case of doubt this may be provided for by inserting sub-clause (iii.) of this form. Executors, administrators and trustees are invested with large powers of settling accounts and compromising, &c., by the T. Act, 1925, s. 15 (see *ant.*, p. 579, note (e)), which might suffice for ordinary cases; but the clause in the text is much more comprehensive. It appears clear that under a power of this nature the assets may be divided in specie. The personal representatives of a deceased trader are not partners within the meaning of the P. Act, 1890, s. 1; *Re Fisher & Sons*, [1912] 2 K. B. 491. The Public Trustee may not accept any trust involving the carrying on of any business: P. T. Act, 1906, s. 2 (4), except as mentioned in the P. T. Rules, 1912, r. 7.

of my death, with power for that ppose to make or concur in makg arrangemts & compromises with debtors or creditors or psons under contract with the firm, & also to dispose of my share in any such business by valun or orwise & generally on such terms as they shl think fit, & to postpone (d) such windg up or disposon [until one or more of my sons shl attain the age of twenty-one yrs, or] durg such period as they shl think pper, & to settle any accounts & accept any statemts of account, whether with or witht the production of any vouchers or other evidence, & to accept, pay, or allow any agrd or estimated sum in satisfon of all or any of my rights or liabilities, & to accept or concur in acceptg, paymt for my share or for the whole of any such business as the case may be, by such instalmts, upon such terms, & in such mner, as they shl think fit.

Power to
leave
capital in
business
(e).

(ii.) My trees may allow the whole or any pt of my share in the capl of any such business to remain as a loan to the pson or psons for the time being carrying on the same business, [& may lend any further sum or sums of moy (not exceedg in the whole the sum of £——) out of my este to him or them,] for such time, under such condons, upon such seey (whether psonal or orwise) & at such rate of intt whether fixed or vary-ing with the profits, as my trees shl think fit ; & generally may act in relation to any such business with the same powers & discrns as if they were absolute owners of such share, witht liability for any loss wch may be occasioned by the exercise of any power hrinbfe contd.

Exercise
of powers
by exe-
cutors.

[(iii.) All or any of the powers hby given to my trees in relation to the sd business & premes may, if & so far as circes may require, be exercised by my exs, & all such powers may be exercised notwithstdg that any of my trees or exs may be interested as a ptner or ptners in the sd business, or may be benefly interested under this my will (a).]

Power to
continue
business

4. (i.) NOTWITHSTDG ANY of the trusts & provons hrinbfe contd, my trees may if they in their absolute discrns shl

(d) See *post*, p. 784, notes. A power to postpone the sale of a business involves a power to continue the business indefinitely : *Re Crowther*, [1895] 2 Ch. 56, unless a contrary intention is implied : *Re Smith*, [1896] 1 Ch. 171.

(e) For a full form, see *post*, p. 753, f. 6.

(a) See *Re Sykes*, [1909] 2 Ch. 241.

think fit, continue my business of — for such period as they shl think desirable, either alone or in ptnp with any pson or psons who may be in ptnp with me at my death or may be subseqtly admitted into ptnp by my trees under the provons hrinar contained, with power to charge or concur in charging the assets of such business with the paymt of any debts incurred in carryg on the same, includg moys borrowed from a bank for the pposes of such business, & with intt thron resply, & also at any time to enter into any new arrangemt or agrmt with any such ptner or ptners, either by way of substiton for or modificon of any then subsistg arrangemt or agrmt in relation to such business or orwise, & if deemed expedient to alter or vary the nature or extent of the sd business, & to retain or employ in such business such pt of my residuary este (whether in excess of my capl or share of capl engaged thrin at my death or not) as my trees may from time to time think pper (c).

forming part of residuary estate alone or in partnership. Full form (b).

(ii.) My trees may at any time admit or concur in admittg as a ptner or ptners into such business any [son or sons of mine, or any other] pson or psons, upon such terms & with or witht the paymt of a premium, as my trees shl think pper, & may leave the entire managemt of the sd business to any ptner or ptners, so as to be free from the necessity of attendg thereto, further than requirg such ptner or ptners to render once or oftener in every yr an account throf, & witht being obliged to examine into the accuracy of such accounts, & may also if they shl think pper leave the entire managemt of such business or my share thrin to any manager or managers, at

Power to admit partners.

(b) As to executors or trustees carrying on a business, see *Strickland v. Symons*, 26 Ch. D. 245; *Re Evans*, 34 Ch. D. 597; *Re Fisher & Sons*, [1912] 2 K. B. 491. As to the right of executors to indemnity, and the rights of creditors, see *Dowse v. Gorton*, [1891] A. C. 190; *Re Frith*, [1902] 1 Ch. 342; *Re Oxley*, [1914] 1 Ch. 604. As to the rights of trustees and of persons injured by them in carrying on the business to indemnity, see *Re Raybould*, [1900] 1 Ch. 199. As to registration see s. 2 and the schedule of the Registration of Business Names Act, 1916.

(c) For a farm say, “& to cultivate, drain, improve & manage any farms held by me at my death, & to sell & dispose of the live & dead stk for the time being thron & the crops raised on the same, & also to pchase such live & dead stk, seeds & manures as they may think fit.”

Variation for farm

such salary or percentage on the profits of the sd business or my share thrin & with such powers & authorities as my trees may think pper.

Power to become limited partner.

(iii.) Any one or more of my trees may allow his or their co-trees or co-tree to engage in or become a ptner in such business, & to act alone in the trusts of this my will so far as relates to the carrying on of such business, & any one or more or all of my trees may become a limited ptner or ptners in such business & in the latter case my trees may appropriate such pt of my residuary este as they may think pper for the capl to be brought into such business by such limited ptner or ptners.

Power to sell.

(iv.) My trees may at any time sell or dispose of the whole or any pt of the sd business, or my share or intt thrin, to any [son or sons of mine, or to any other] pson or psons, for such price or sum to be ascertained by valun or orwise & upon such terms as they may think fit.

Power to appoint one of trustees manager, &c.

[(v.) My trees may if they think fit appt one of themselves to be the manager of the sd business or admit him into ptnp thrin or sell the sd business & premes to him upon such terms in all respts as they may think fit (d).]

Powers on winding up.

(vi.) If & when my trees shl wind up the sd business or shl dispose throf or of my intt thrin, they may make such arrangemts in relation thereto as they may think desirable, with full power to settle accounts & to accept any statemts of account with or witht production of vouchers or evidence, & to leave to any agent, ptner, or other pson or psons the collectg of any outstandg debts, & to give time to any ptner or ptners or pson or psons pchasg or succeedg to the sd business for paymt of the capl or other sums owing or belongg or payable to my este in respt throf, or to lend any sum [not exceedg £——] out of my residuary psonal este & from time to time to continue the loan throf to him or them either alone or jointly with his or their ptner or ptners for the time being durg such period as my trees shl think pper & either with or witht takg secy for the same in addition to the bond or covt of such ptner or ptners or pson or psons as afsd,

(d) The trustee-manager will have no right to a salary as against the creditors of the business: *Re Salmen*, 107 L. T. 108.

upon the footg of receivg in respt throf either a fixed rate of intt or a rate varyg with or dependent upon the profits of the sd business, & generally to exercise the same powers & discrns in relation to the sd business & premes as if actg on their own acct, & so as to be free from all responsibility & to be fully indemnified by my este in respt of any loss arisg in relation thereto.

(vii.) All profits or intt accruing to my este from the carrying on of the sd business, or from the employmt of my capl or any pt of my este thrin on the footg of a loan or otherwise, shl be treated & applied as income of my residuary este.

Profits
(a).

[(viii.) *Provision as to exercise of powers by exors as in f. 3 (iii.).*]

5. MY TREES may carry on, [or, "join in carrying on,"] the trade or business of —, now carried on by me [the firm of —, in wch I am a ptner], durg such period as they shl think fit, with power for that ppose (c) to retain & employ thrin the capl, [or, "my share of the capl,"] wch shl at my death be employed thrin, & such additional capl as they shl think fit to advance from time to time out of my residuary este, & to employ, [or, "concur in employing,"] at such salary as they shl think fit, any manager of the sd business, & generally to act, [or, "concur in actg,"] in all matters relatg to the sd business, as if they were benefly entitled thereto, [or, "to my share & intt thrin,"] & to delegate all or any of the powers vested in them in relation to the sd business to any psons or pson whom they may think fit: And my trees shl be free from all responsibility, & be fully indemnified out of my este in respt of any loss arisg in relation to the sd business.

Power to
continue
business.
Short
form (b).

6. (i.) MY TREES may if they think fit permit the whole or any pt of the amt wch on takg the ptnp accounts shl appear to be due to my este as & for my share & intt in any ptnp

Power to
leave
capital in
business
on loan.

(a) See *ante*, p. 748, note (a). Depreciation must be allowed for before ascertaining profits; *Re Crabtree*, 106 L. T. 49; see also as to the meaning of profits, *ante*, p. 352, note (b).

(b) See *ante*, p. 751, note (b).

(c) For a farm add "to cultivate, &c." as in the form in note (c), *ante*, p. 751, and continue "& to retain, &c." For a fuller and alternative form of clause where a farming business is to be carried on, see Hayes & Jarman, 14th ed., 440.

A full
Form.

business in wch I may be engaged at my death, to remain in the sd business on the footg of a loan for such period as they may think pper, upon the terms of receivg intt for the same either at a fixed rate or at a rate varyg with or dependent on the profits of the business, & upon such other terms in all respts as may be deemed pper or expedient; & may from time to time renew or continue such loan wholly or partially, & may agree to any alteron or modificon of the terms throf, so that the repaymt of the sd capl with the intt thron as agrd shl be seed by the bond or covt of the pson or psons to whom the loan shl be made either with or wtht any other secy for the same, as my trees shl think fit.

(ii.) My trees may exercise these psnt powers notwithstdg that my trees or any or either of them may be engaged or concerned thrin, & notwithstdg any change from time to time in the ptnp firm or in the character of the business, & shl not be in anywise responsible for any loss occasioned thereby.

Power to
convert
business
into a
company
(c).

7. MY TREES may at the expse of my este at any time convert or join in convertg the sd business into a Co limited by shares in such mner as they may think fit, & may promote or assist in promotg a Co for the ppose of takg over the sd business & may sell or transfer the sd business & the ppty, assets, & capl embarked thrin & the goodwill throf or any pt throf to such Co, or may sell or transfer the same to any Co having for its object or one of its objects the pchase of a business of a like nature, in conson in either case, wholly or in pt, of ordinary shares or stock in any such Co wholly or partially pd up, or wholly or in pt of debentures, debenture-stk, or bonds or of preferce shares or stock of any such Co, & as to the balance (if any) in cash payable immedly or by any instalmts, with or wtht secy, & my trees or any of them may act as directors, manager, or secretary of or hold any other office in relation to any such Co wtht being accountable for any remuneron received by them or him as such, & may enter into any such other arrangemts as to any such Co, or as to the sale or transfer of the sd business & the assets throf to any such Co (whether

(c) In the absence of an express power, the Court will not, save in exceptional circumstances, sanction a conversion of the testator's business into a company in consideration of shares and debentures: see *Re Tollemache*, [1903] 1 Ch. 457 (affirmed *ib.*, 955), and cases there cited.

bfe or after the incorporon throf), as my trees shl think fit, & so that all contracts or arrangemts wch may be made or entered into by my trees for any of the pposes afsd shl be valid & effectual notwithstdg that any trees or tree may be a promoter or promoters of any such Co, or may be interested or concerned thrin or intended so to be as a shareholder, director, manager, secretary, or in any other character or capacity.

(ii.) The sale or transfer of the sd business & the assets throf to any such Co as afsd may, if deemed necy or expedient, be effectuated by my exs in that character, in wch case they shl have all such & the like powers & authorities in relation thereto as are hrinbfe given to my trees :

(iii.) All shares, bonds, debentures, debenture stk, & moys wch may be received as the conson for the sale & transfer of the sd business & the assets throf, or any pt throf, to any such Co as afsd shl be vested in & held by my trees upon the trusts hrinbfe declared of & concerng my residuary este & the investmts & premes representg the same.

8. MY EXORS may exercise at their diseron [shall exercise] the option given to them by the articles dated, &c., wch now regulate my ptnp in the firm of —, or any option wch may be available in that behalf at my death, of becomg sleepg [limited] ptners in such firm: And I declare that [if my exors shl elect to become such sleepg [limited] ptners] their share from time to time in the capl of the sd firm shl be considered as formg pt of the capl of my residuary este, & that their share from time to time in the profits throf & intt on capl, as from the last day immedly precedg my death appted by the sd articles of ptnp for takg the annual general account of the sd ptnp business, shl be considered & applied as income of my residuary este.

Power or direction to executors to exercise option of becoming sleeping or limited partners.

9. MY EXORS [& trees] may make any arrangemts with the ptners or ptnr for the time being of the firm of —, in wch I am now a ptnr, for the admission into the sd firm of any son or sons of mine as a ptnr or ptners, for the whole or any pt of my share in the sd business ; And on the admission of such son or sons may either sell to him or them my share in the sd business on such terms as may be reasonable or may allot such share to him or them in satisfon, wholly or in pt, of his or their share or shares in my residuary este ; & may leave the

Power to executors to make arrangements for admission of testator's son into his business

whole or any pt of the pchase-moy to be pd by any such son as a loan to him, repayable with intt at the rate of £5 p.c. p.a. by such instalmts, at such times, & in such mner as may be agrd upon, but so that the repaymt of such instalmts & intt shl be seed by the bond or covt of such son.

Sons to have option in succession of succeeding to testator's business, or to a share in a partnership (d).

10. (i.) MY SONS shl have the option in succession accordg to seniority, [on attaing the age of — yrs,] of succeedg to my [share in the] business [of the firm] of —, [in wch I am now a ptner,] such option to be declared in writg by each son within such time as my exors shl appt in that behalf by a notice given to such respective sons in succession.

(ii.) Immedly on any son of mine electg to succeed to such business, [share,] my exors shl make all necy arrangemts for introducng him into the business [sd firm for the whole of my share thrin].

(iii.) From & after the succession of such son the whole of my share in] the sd business & the capl throf shl belong to him, & he shl be debited with the value throf, (estimated in such mner as my exors shl think fit) in the division of my este, & if such value shl exceed the total amt of the share of such son in my este, he shl refund such excess to my este by instalmts togr with intt thron at the rate of — p.c. p.a. from my death or orwise in such mner as my exs shl determine & shl secure the paymt throf by his bond or orwise as my exs shl require.

(iv.) The profits of the sd business until any son of mine shl elect to succeed thereto [share of profits comg to my este until the admission of such son] shl be treated as income of my residuary este (e).

Power to executors to reserve right of introducing testator's son or sons on attaining 21 into business (a).

11. MY EXORS may make any arrangemts wch may be feasible, & wch they may think fit, for securg the introdcon of any son or sons of mine, as & when he or they shl resply attain the age of twenty-one yrs, or within a reasonable time afterwards, as a ptner or ptners into the sd business, [firm, for pt of the share of any such son or sons as shl be admitted under such arrangemt as afsd,] upon such terms as may be agrd upon.

(d) For an alternative form of an option to a son, see Hayes & Jarman, 14th ed., Prec. 21, cl. 4, p. 304.

(e) See ante, p. 748, note (a).

(a) This form may be added to forms 9 or 10.

GENERAL LEGACIES (b).

(i.) LEGACIES TO INDIVIDUALS

1. I GIVE to A., of, &c., the sum of £—— [to be increased in the event of, &c., to £——, & to be free of duty (c)] [to be pd within —— calr months after my death]. Pecuniary legacy.
2. I GIVE the followg legacies [all free of duty.] namely, to A., of, &c., the sum of £——, to B., of, &c., the sum of £——, & to C., of, &c., the sum of £——. Thesame. Several.
3. I GIVE to B. [the wife of C.] of, &c., the sum of £—— [free of duty]; But if the sd B. shl at my death be or shl afterwds & before paymt of the sd legacy become under coverture, the same shl not be pd to her but shl be pd to my trees & retained by them durg her coverture & invested for the benefit & with the consent of the sd B. in any investmts hby authorised, for the investmt of trust moy with power with her consent to vary such investmts, & so that the same shl be witht power of anticipon durg such coverture. Legacy to female (d).

(b) As to the distinction between general and specific legacies, see *Bothamley, v. Sherson*, L. R. 20 Eq., at p. 308; the cases collected in *Robbins & Maw*, 4th ed., 295; *Re Willcocks*, [1921] 2 Ch. 327, and *Re Hawkins*, [1922] 2 Ch. 569. A general legacy payable at a future day carries interest only from the time fixed for payment, but where no time is fixed, the legacy is payable and therefore bears interest from the end of the year after the testator's death: *Lord v. Lord*, L. R. 2 Ch. at p. 789, and see *Lord Londesborough v. Somerville*, 19 Beav. 295; *Benson v. Maude*, 6 Madd. 15; *Wood v. Penoyre*, 13 Ves. 325 (a); *Re Yates*, 96 L. T. 758; *Re Whiteley*, 101 L. T. 508; *Re Harrison*, [1918] 2 Ch. 374.

(c) The remarks, made *ante*, p. 725, as to the duties payable in respect of specific legacies apply equally to general legacies, except that general legacies payable out of real estate are chargeable with succession duty instead of legacy duty: Customs, &c., Act, 1888, s. 21; and that, to the extent to which a general legacy is payable out of real estate, it must be treated as real estate for the purpose of estate duty and bear the proportionate part of estate duty attributable to it: *Re Spencer Cooper*, [1908] 1 Ch. 130.

(d) A restraint on anticipation may be annexed to an absolute gift to a married woman where, on the construction of the will, it appears that the testator intended that the gift should not be paid over to her, but should be retained by the trustees during her coverture in trust for her: *Re Boun*, 27 Ch. D. 412; *Re Grey*, 34 Ch. D. 85, 712; *Re Tippet & Newbould*, 37 Ch. D. 444; *Re Holmes*, 67 L. T. 335; *Re Millward*, 87 L. T. 476. A direct bequest to the married woman appears to amount to a direction that the gift shall be paid over, and a restraint annexed to such a gift would therefore be ineffectual. Before the M. W. P. Act, 1882, an absolute gift to a married woman for her separate use implied a trust for her (without

Restraint
on antici-
pation.

Demon-
strative
legacy (e).

4. I GIVE to A., of, &c., the sum of £——, [free of duty] to be raised by the sale of a sufficient pt of the 2½ p.c. Consolidated Stk now standg in my name, as the primary fund for the paymt throf, & if I shl not be possessed of such stk or a suffioient amt throf at my death, I direct that the sd legacy, or so much throf as the sd stk shl be insufficient to pay, shl be pd out of my general psonal este.

Legacy
in trust.

5. I GIVE to my trees the sum of £——, [free of all duty leviabie or chargeable at my death (f)] upon the trusts hrinar declared concerning the same.

Stock
legacy
in trust.

6. I GIVE to my trees [free of all duty leviabie or chargeable at my death (f)] the sum of £——, 2½ p.c. Consolidated Stk, to be appropriated or pchased in their names out of my general psonal este, & to be held upon the trusts hrinar declared throf [that is to say:—]

Thesame,
Another
form.

7. I GIVE to my trees [free of all duty leviabie or chargeable at my death (f)] the sum of £——, &c., stk., as a general

which the separate use could not exist) to which the restraint on anticipation could be annexed: *Bagget v. Meux*, 1 Phil. 627; but since the date of the Act, a gift to a married woman, whether for her separate use or not, becomes her absolute property without the intervention of any trustee; and therefore the words “for her separate use,” no longer imply a trust. Consequently, where it is intended that an absolute gift to a married woman shall be subject to a restraint on anticipation, the trustees should be directed to retain the gift during the coverture, as in the text. In some settlements the provision for settlement of after-acquired property excepts property given to the wife expressly for her separate use. To meet this case, the legacy may, if thought fit, be given to her for her separate use.

Gift to
husband
and wife.

A husband and wife for all purposes of acquisition of any interest in property under a disposition taking effect after 1925, are treated as two persons: L. P. Act, 1925, s. 37; and also for purposes of distribution or division on an intestacy: A. E. Act, 1925, s. 46 (2).

(e) See *Re Walford*, [1912] 1 Ch. at p. 228; [1912] A. C. 658.

(f) In giving settled legacies free of duty it must be remembered that in the case of legacy duty if the rates of duty payable in respect of the interests for life and in reversion are not identical, payment of that part of the duty which is referable to the reversionary interest will be postponed until the death of the tenant for life; and that estate duty will become payable on the death of the first life-tenant not being the testator's widow (see Fin. Act, 1914, s. 14). Under the direction in the text, the whole of the legacy duty and the proportionate part (if any) of estate duty leviabie at the testator's death and attributable to the legacy will be payable out of residue, but any estate duty leviabie on the death of the tenant for life will be borne by the settled legacy: see and consider *Re Turnbull*, [1905] 1 Ch. 726; *Re Snape*, [1915] 2 Ch. 179; *Re Palmer*, [1916] 2 Ch. 381;

& not as a specific legacy (*g*), to be held upon the trusts, &c.

8. I GIVE to my wife the sum of £——, to be pd to her within, *one, calr month or*, “immediately” after my death [free of duty] for her immediate requiremts & in priority to all other bequests hby made.

Imme-
diate
legacy to
wife (*h*).

9. I GIVE to A. of, &c., the sum of £——, [free of duty] but if he shl die in my lifetime, then I give the same to his chln or child (if any), livg at my death, who being male attain the age of twenty-one yrs, or being female attain that age or marry, if more than one in eql shares.

Legacy to
a person
or to his
children
by substi-
tution (*a*).

10. I GIVE the followg legacies, [all free of duty] namely, to A. of, &c., the sum of £——, to B. of, &c., the sum of £——, & to C. of, &c., the sum of £——; but if any of the sd legatees shl die in my lifetime, then I give his or her legacy to his or her chln or child (if any), living at my death who, &c., *as in precedg form*.

The same.
Several.

11. I GIVE the sum of £—— [free of duty] to A. of, &c., but if he shl die in my lifetime leavg issue survivg me, I give the same to his rpves to be disposed of as pt of his psonal este.

Legacy
providing
against
lapse if
legatee
dies
leaving
issue (*b*).

Re D'Oyley, [1917] 1 Ch. 556; *Re Wedgwood*, [1921] 1 Ch. 602; *Re Duke of Sutherland*, [1922] 2 Ch. 782; *Re Fenwick*, [1922] 2 Ch. 775; and compare the different forms of direction in *Re Stoddart*, [1916] 2 Ch. 444; *Re Tinkler*, [1917] 1 Ch. 242; *Re Eve*, [1917] 1 Ch. 562; *Re Parker*, 86 L. J. (Ch.) 706; *Re Sarson*, [1925] Ch. 31.

(*g*) See *Re Compton*, [1914] 2 Ch. 119.

(*h*) As regards payment of interest, a general legacy to the testator's wife forms no exception to the general rule: *Re Whittaker*, 21 Ch. D. 657; *Re Crane*, [1908] 1 Ch. 379. Where the personal estate is insufficient, a legacy to the wife is liable to abatement though given for her immediate requirements and directed to be paid within a short time after the testator's death: *Re Schweder*, [1891] 3 Ch. 44; unless given in lieu of dower: *Blower v. Morret*, 2 Ves. Sen. 420; in a case where the wife is entitled to dower: *Re Greenwood*, [1892] 2 Ch. 295; and see *Re Lawley*, [1902] 2 Ch. at p. 807; *Re Whitehead*, [1913] 2 Ch. at p. 59. Priority should, therefore, be expressly given to such a legacy as in the above form. As to describing as “wife” a person to whom the testator is not legally married, see *post*, p. 920, note (*b*).

Legacy
to testa-
tor's wife.

A gift to the wife of another person means *prima facie* the wife living at the date of the will: *Re Coley*, [1903] 2 Ch. 102.

Wife of
another
person.

(*a*) A contingent general legacy is unaffected by the provisions of s. 175 of the L. P. Act, 1925, and does not carry interest unless given to a child by a parent or person *in loco parentis*. The rate of interest in the excepted cases is 5 p.c.: T. Act, 1925, s. 31 (3). See also note (*c*), *post*, p. 760.

(*b*) See cases cited, *ante*, p. 738, note (*a*). A legacy given over in this manner devolves as if it formed part of the legatee's estate in the same

Provision
against
lapse.

The same
to several.

Legacy to
vest at
21 (c).

The same
to a
female
at 21 or
marriage.

12. I GIVE *dec.*, as in f. **10**, but if any of such legatees sh^l die in my lifetime leav^g issue surviv^g me, then I give the legacy h^{rin}b^fe bequeathed to him or her to, &c., as in last form, *mutatis mutandis*.

13. I GIVE the sum of £—— [free of duty] to A. of, &c., if & when he sh^l attain the age of twenty-one yrs (*d*).

14. I GIVE the sum of £—— [free of duty] to A. of, &c., if & when she sh^l attain the age of twenty-one yrs, or marry under that age, & so that if married her receipt for the same sh^l, notwithstd^g her minority, be a sufficient discharge (*e*).

manner as a legacy to a descendant of the testator saved from lapse by the Wills Act, 1837, s. 33, but it is not part of the estate of the legatee, and is therefore not liable to duty as passing from him: *Lord Advocate v. Bogie*, [1894] A. C. 83; but a legacy saved from lapse by s. 33, is liable (*Perry v. R.*, L. R. 4 Ex. 27; *Re Scott*, [1901] 1 K. B. 228) to duty as passing on the death of the legatee, and if the legatee were an undischarged bankrupt would vest in his trustee in bankruptcy: *Smith v. Pearson*, [1920] 1 Ch. 247.

Interest
on con-
tingent
general
legacies.

(c) A contingent general legacy, unless directed to be set apart for the benefit of the legatee (*Re Medlock*, 55 L. J. Ch. 738; *Re Clements*, [1894] 1 Ch. 665; *Re Woodin*, [1895] 2 Ch. 309), does not carry interest until it vests: *Re George*, 5 Ch. D. 857; *Re Boulter*, [1918] 2 Ch. 40. Where, however, the legacy is given to an infant of whom the testator is the father or to whom the testator stands *in loco parentis* (*Re Eyre*, [1917] 1 Ch. 351) it "carries interest for maintenance" as that expression is explained in *Re Bowlby*, [1904] 2 Ch. 685, unless provision is made by the will for maintenance out of some other property: *Re George, sup.*; *Re Moody*, [1895] 1 Ch. 101; *Re Bowlby, sup.*; *Re Abrahams*, [1911] 1 Ch. 108; *Re Boulter, sup.*; or unless the legacy is given on a contingency which has no reference to infancy: *Re Abrahams, sup.* Until the contingency happens the legacy and any sum which, although applicable, is not in fact applied for maintenance remains part of the general estate of the testator: *Re Dickson*, 29 Ch. D. 331; *Re Hall*, [1903] 2 Ch. 226; *Re Bowlby, sup.*

A contingent legacy coupled with a power to trustees to apply any part thereof towards maintenance during minority stands apparently upon the same footing, as regards interest, as a contingent legacy from father to son: *Re Churchill*, [1909] 2 Ch. 431; *Re West*, [1913] 2 Ch. 345.

Certain
contingent
gifts
carry in-
come
under
L. P.
Act,
1925.
Infant's
receipt.

Contingent or future specific devises and bequests of real and personal property, contingent residuary devises of freehold land and specific or residuary devises of freehold land to trustees for persons whose interests are contingent or executory, carry the intermediate income unless otherwise disposed of by the will: L. P. Act, 1925, s. 175.

(d) *I.e.* be alive for any part of the day preceding the 21st anniversary of his birthday: *Re Shurey*, [1918] 1 Ch. 263.

(e) As to imposing a restraint on anticipation on an absolute gift, see *ante*, p. 757, note (d). An infant can give a receipt for money paid to him in pursuance of an instrument which provides that his receipt shall be a discharge:

15. I GIVE to my trees the sum of £—— [free of duty] upon trust to invest the same in or upon any of the investmts hby authorised for the investmt of trust moys with power to vary any such investmts And I declare that my trees shl hold the sd sum of £—— & the investmts & income thof IN TRUST for A., if & when he attains the age of twenty-one yrs, but if the sd A., shl die under the age of twenty-one yrs then I declare that the sd sum of £—— & the investmts & income thof & all statutory accumulons of the income shl sink into & form pt of my residy este.

Legacy in trust for infant at 21 (f).

16. I GIVE to my trees the sum of £—— [free of duty] upon trust for *investmt, &c., as in last form, continuing* IN TRUST for such of my chln [the chln of A., deced] as being male attain

Legacy in trust for class of children at 21 (g).

Re Deneker, 72 L. T. 220; see *Re Cardross*, 7 Ch. D. 728; *Re D'Angibau*, 15 Ch. D. 228; but no doubt it will sometimes be convenient to authorise payment to the infant's parent or guardian: see *post*, p. 763, f. 19. As to receipts by married infants, see s. 21 of the L. P. Act, 1925.

(f) The legacies in this and the following form carry interest (see note (c) to f. 13), and accordingly the statutory provisions for maintenance and accumulation apply: T. Act, 1925, s. 31. See *Re Dickson*, 29 Ch. D. 331; and accumulations of income will follow the fate of the capital: *Re Bowlby*, [1904] 2 Ch. 685; T. Act, 1925, s. 31 (2) (ii). See as to settled shares: *Re Mellor*, [1922] 1 Ch. 312.

Maintenance in respect of contingent legacies.

A legacy framed in this form in reliance upon the statutory powers of maintenance and accumulation is preferable to that of a vested legacy defeasible on death under twenty-one, an example of which is given in the form 18, *infra*.

An express direction to the trustees to apply the whole or any part of the intermediate income as they may think fit for the maintenance or benefit of the infant will have the effect of vesting the legacy unless that result is expressly negatived: *Fox v. Fox*, L. R. 19 Eq. 286; *Re Parker*, 16 Ch. D. 44; *Re Bunn*, 16 Ch. D. 47; *Re Williams*, [1907] 1 Ch. 180; *Re Hume*, [1912] 1 Ch. 693, 699; *Re Ussher*, [1922] 2 Ch. 321. As to the effect of a direction for maintenance preceding a life interest, see *Re Woolf*, [1920] 1 Ch. 184.

Vesting of contingent legacies.

(g) See note (f) to last form. The rule that a direction to apply interim interest for maintenance has the effect of vesting a legacy which is contingent in form, applies to a gift to a class of persons upon attaining a specified age where each beneficiary is to have the income of his or her expectant share, and the testator does not create a common fund for the common maintenance of the class: *Re Turney*, [1899] 2 Ch. 739; *Re Gosling*, [1903] 1 Ch. 448; *Re Hume*, [1912] 1 Ch. 693; (but see *Re Wintle*, [1896] 2 Ch. 711); but a mere discretionary power to apply the income of an expectant share for the maintenance or benefit of the beneficiary, coupled with a direction to accumulate the income not so applied for the benefit of the persons who ultimately attain a vested interest in the share, does not have the effect of vesting the corpus; *Re Hume, sup.*, at p. 699. The

the age of twenty-one yrs or being female attain that age or marry if more than one in equal shares But if there shl be no such child of mine [of the sd A.,] as afsd then I declare, &c. *gift over as in last form.*

Legacies with interest to two persons at 21 with survivorship (*h*).

17. I GIVE to A. & B., the sons of —, the sum of £—— each. [free of duty] to be pd to them resply if & when they resply attain the age of twenty-one yrs, with intt at the rate of — p.c. p.a. from my death, & if either of them shl die in my life-time, or bfe he shl attain that age, I give the legacy hrinbfe given to him with intt as afsd, to the survor of them if & when he shl attain the age of twenty-one yrs, & if both of them shl die in my lifetime, or bfe attaining that age, the sd legacies shl sink into my residuary este & not be payable.

Legacy to child at 21, with interim maintenance (*i*).

18. I GIVE the sum of £—— [free of duty] to my son — if he shl attain the age of twenty-one yrs, with intt in the meantime at the rate of — p.c. p.a., to be computed from my death, & to be applied as hrinar mentioned for the maintce or benefit of my sd son, & if my sd son shl die under the age of twenty-one yrs, then the sd legacy shl sink into my residuary este & not be payable.

rule, moreover, has no application where the gift is to such members of a class as attain a specified age : see *Re Ricketts*, 103 L. T. 278 ; *Re Hume*, *sup.* The statutory power of maintenance may here be relied upon unless it is desired that the income should be applied as a common fund ; see *post*, p. 825, f. 1.

(*h*) The legacies in this form are contingent as regards both capital and interest : see *Re Kirkley*, 62 Sol. J. 364.

Maintenance in respect of legacies vested but defeasible.

(*i*) This is a vested legacy defeasible on death under twenty-one : see Theobald, 7th ed., 571 ; Hawkins, 3rd ed., 265 ; *Re Francis*, [1905] 2 Ch. 295. It is a form of legacy that can seldom be required, and should not be adopted unless the defeasance is bound to happen, if at all, before the residue becomes distributable. It is not apparently a legacy, to which an infant is absolutely entitled within the meaning of s. 42 of the A. E. Act, 1925 ; and, accordingly, remains, as formerly, within the rule applicable in the case of contingent legacies, namely, that unless expressly authorised the executors will have no power to appropriate specific investments to answer the legacy so as to free the residue : *Re Hall*, [1903] 2 Ch. 226 ; *Re Salamon*, [1907] 2 Ch. 46 ; *Re Salomons*, [1920] 1 Ch. 290. From this it also follows that notwithstanding the altered language of the T. Act, 1925, s. 31 (1), there will be no property held by trustees in trust for the infant, the income of which will be applicable for maintenance under that section. Interest at the rate mentioned in the bequest will, of course, be applicable for maintenance as directed ; but express provisions for maintenance and accumulation and trusts of the accumulated fund (if any) will usually be required : see *Re Buckley's Trust*, 22 Ch. D. 583.

19. I DECLARE that in every case in wch any legatee absolutely entled in posson to a legacy under this my will or any codl hto shl be under the age of twenty-one yrs, & in the case of a female unmarried, his or her legacy may be pd by my exs or trees at their option & in their absolute discron to the parent or guardian or guardians of such legatee, whose receipt shl be a complete discharge for the same & exonerate them from all further concern or responsibility in relation thereto.

Power to pay infant's legacies to parent or guardian (k).

20. (i.) I DECLARE that if any legatee to whom a legacy is hrinbfe given whether absolutely defeasibly, or contingently shl at the time when his or her legacy wd orwise become payable be a minor & if female also unmarried, his or her legacy may be invested by my trees in any investmts hby authorised in the case of my residuary este, with power to vary such investmts at discron, & if so invested shl durg the minority or minority & spinsterhood, as the case may be, of such legatee, be deemed to be ppty held in trust for such legatee within the meang of s. 31 of the T. Act, 1925. Provided always that if any of the sd legatees shl die before attaing a vested & indefeasible intt in his or her legacy, the same & any accumulations throf or so much throf as shl not have been applied or disposed of under the staty power in that behalf, shl sink into & form pt of my residuary este.

General direction as to investment, &c., of infant's legacies.

21. I GIVE to my trees the sum of £—— [free of duty] Upon trust for A. of, &c., if he shl attain the age of, *thirty*, yrs (b), or such earlier age as my trees shl in writg declare, bfe any act or event shl be done or happen, other than an act done with the written consent of my trees or their subsequent

Gift to a young person exposed to undue influence (a).

(k) See *Cooper v. Thornton*, 3 Bro. C. C. 96, 186. An infant's legacy may be paid into Court in a proper case: see T. Act, 1925, s. 63, *Re Salaman*, [1907] 2 Ch. 46. In the case of a legacy given absolutely to an infant without the intervention of a trustee, the executors may discharge themselves from all liability in respect thereof, by appointing as trustees of the legacy a trust corporation or two or more, but not exceeding four, individuals including themselves or some of them if they so desire, and vesting the legacy in such corporation or trustees so appointed in trust for the infant. See A. E. Act, 1925, s. 42, overruling the decision in *Re Salomons*, [1920] 1 Ch. 290, in which the rule relating to contingent legacies had been applied to vested or absolute legacies.

Liability of executors in regard to infants' legacies given absolutely.

(a) The protective trusts declared by s. 33 of the T. Act, 1925, only apply to income.

(b) The age should be one which will be reached not later than twenty-one years from the date of the will.

approval in writing given within three calr months after such act, whereby the sd sum if given to him absolutely wd become vested in or charged in favour of some other pson or psons or a corporon.

Legacy
to god-
children.

22. I GIVE the sum of £—— [free of duty] to each of my god-chn, & I declare that if any doubt shl arise as to who are the objects of this bequest, my exors shl be at liberty to act upon such evidence as they shl think fit, & their determinon shl be conclusive(c), & that any god-child who or whose parent or guardian on behalf of such god-child shl not claim his or her legacy within one yr from my death shl not be entitled thereto.

Legacies⁷
to execu-
tors and
trustees
(d).

23. I GIVE to each of them the sd A. & B. [to each of my exors [& trees] except the sd A.], if they shl respily prove my will [& accept the trusteeship throf], or, “as a small acknowmt for their trouble in the exorship [& treeship] of this my will,” the sum of £—— [free of duty].

Legacy to
a servant
(e).

24. I GIVE to my servant A. the sum of £—— [free of &c.,] in addition to any moys owing to him by me at my death [in recognition of, or, “as an acknowmt for,” his long & faithful services to me & my family, or, “provd he shl be in my service at the time of my death and not be under notice to leave whether given or received”].

Legacies
to ser-
vants or
clerks.

25. I GIVE to each of my domestic (a), or, “indoor & outdoor,” servants [clerks], who shl be in my service [employed

(c) Although these words do not oust the jurisdiction of the Court, *Re Raven*, [1915] 1 Ch. 673, they may be a protection to the executors.

Legacies
to execu-
tors.

(d) It is a presumption which is rebuttable that a legacy given to a person appointed executor, whether preceding or following the appointment, is annexed to the office, see *Re Appleton*, 29 Ch. D. 893; but this presumption does not arise in the case of a gift of residue: *Griffiths v. Pruett*, 11 Sim. 202; *Christian v. Devereux*, 12 Sim. 264; *Re Maxwell*, [1906] 1 Ir. R. 386.

Legacies
to ser-
vant.

(e) As to legacies to servants, see 4 Dav. Prec., 3rd ed., 75, note; Jarman, 6th ed., 403, 1119; *Re Forrest*, [1916] 2 Ch. 386; *Re Drake*, [1921] 2 Ch. 99; *Re Cassell*, Times Newsp., Nov. 15th, 1922; *Re Countess of Rosse*, 67 Sol. J. 638; *Re Brownlow*, [1924] W. N. 322.

(a) As to the meaning of “domestic” see *Ogle v. Morgan*, 1 De G. M. & G. 359; *Vaughan v. Booth*, 16 Jur. 808; *Re Lawson*, [1914] 1 Ch. 682; *Re Bell*, [1914] W. N. 89; *Re King*, [1917] 2 Ch. 420; *Re Jackson*, [1923] 2 Ch. 365, in which case the Court of Appeal held that *Ogle v. Morgan*, *sup.*, was not to be treated as deciding that in all cases outdoor servants are excluded from the benefit of a bequest to “domestic servants.”

in my business] at my death [shl have been in my service for — yrs [a continuous period of — years immedly] prior to my death (b)] & shl not be under notice to leave, whether given or received, the sum of £—— [the amt of one yr's wages, or, "salary" (c)] [free of &c.], in addition to any moys owing to them resply by me at my death.

26. I GIVE to the followg servants of mine who shl be in my service at my death, & shl not then be under notice to leave, whether given or received, the followg legacies [all free of duty], namely,

The like according to length of service.

(i.) To my butler, £—— for every complete yr that he shl have been in my service,

(ii.) To my coachman, £—— for every complete yr that he shl have been in my service.

Each of the sd legacies shl be in addition to, &c., as in last form.

27. I GIVE to my exors the sum of £—— [free of &c.], to be divided among or applied for the benefit of such of my indoor & outdoor servants as shl be livg with me at my death, in such proportions & mner as my exors shl in their absolute discreon think fit, in addition, &c., as in f. 25.

Legacies to servants at discretion of executors.

28. I GIVE the sum of £—— [free of duty] to —— in addition to any moys weh may be owing to him from me at my death.

Legacy to creditor (d).

(b) As to these words see *Re Sharland*, [1896] 1 Ch. 517; *Re Drake*, [1921] 2 Ch. 99; and cf. *Re Cole*, [1919] 1 Ch. 218.

(c) As to these words see *Re Earl of Sheffield*, [1911] 2 Ch. 267; *Re Smith*, [1915] W. N. 12.

(d) The presumption is that a legacy to a creditor of an amount equal to or greater than the debt is to satisfy it, even if the creditor is appointed executor: *Re Rattenberry*, [1906] 1 Ch. 667. This presumption may, however, be rebutted as, for example, by a direction in the will that debts are to be paid, or by a direction that the legacy is to be paid *in futuro*; see notes to *Ex p. Pye*, 2 White & T. L. C.; *Re Fletcher*, 38 Ch. D. 373; *Re Huish*, 43 Ch. D. 260; *Re Horlock*, [1895] 1 Ch. 516; *Re Roberts*, 50 W. R. 469.

Legacies to creditors.

An immediate general legacy given in satisfaction of a debt carries interest from the time (if any) fixed for the payment of the legacy: *Clark v. Sewell*, 3 Atk. 96; and if none is fixed, then from the testator's death: *Re Rattenberry*, *sup.* Such a legacy has been held to abate rateably with other general legacies: *Re Wedmore*, [1907] 2 Ch. 277; but see *Re Lawley*, [1902] 2 Ch. at pp. 678, 807, 808; and cf. *Re Whitehead*, [1913] 2 Ch. 56. A legacy merely to discharge statute barred debts does not lapse: *Stevens v. King*, [1904] 2 Ch. 30.

There is no presumption that a legacy is intended as a satisfaction of a *donatio mortis causa* of equal amount; *Hudson v. Spencer*, [1910] 2 Ch. 285.

Direction that legacies are not to be in satisfaction of debts (e).

29. I DECLARE that any legacy hereby bequeathed to any person to whom I may be indebted, or to the husband or wife of any such person, shall be in addition to & not in satisfaction of the moiety which may be so owing by me to him or her, or to his or her wife or husband.

30. I GIVE to A., now residing with — [the natural, or, “reputed,” son of —] the sum of £—— [free of duty].

Legacy to illegitimate child (f).

Legacy in satisfaction of covenant in daughter's settlement.

Legacy on trusts of daughter's settlement.

31. I GIVE the sum of £——, with interest at the rate of £4 p.c. p.a. from my death [free of, &c.] to the trustees or trustee of a settlement [trust instrument] dated, &c., & made on the marriage of my daughter —, in satisfaction of a covenant entered into by me in such settlement [trust instrument] for payment of such principal sum & interest to such trustees or trustee.

32. I GIVE the sum of £—— [free of all duty leviable or chargeable at my death (g)] to the trustees or trustee of a settlement [trust instrument] dated, &c., & made on the marriage of my daughter —, to be held Upon the trusts & with & subject to the powers & provisions by & in such settlement declared & continued concerning the moiety to arise from a sale under the trusts therein contained of the sum of £—— 2½ p.c. Consolidated Stock thereby settled, or, “concerning the property thereby settled or agreed to be settled by or on the part of my said daughter,” or, “concerning the after-acquired property of my said daughter thereby agreed to be settled” or as the case may be, or such of the same trusts, powers & provisions as may be subsisting at my death, & so that such trusts, powers, & provisions shall take effect in relation to the said sum of £—— in the same manner in all respects, so far as the case will admit, as if such sum had formed part of the moiety to arise from such sale, or, “of the property originally settled or agreed to be settled by or on the part of my said daughter,” or, “of such after-acquired property of my said daughter,” [save & except, &c., insert any modifications in the trusts].

Power to transfer trust legacy of daughter to trustees of her settlement.

33. (i.) MY TRUSTEES may at any time with the consent in writing of my said daughter A. & the said B. her husband, or the survivor of them, & after the death of such survivor at the discretion of my trustees, transfer the trust premises representing the said legacy of £—— hereinbefore bequeathed in trust for my said daughter & her

(e) See note (d) *supra*.

(f) All that is necessary in this case is that the legatee should be sufficiently identified: see 2 Jarman, 6th ed., 1748; and *post*, p. 921, note (c).

(g) See *ante*, p. 753, note (f).

husbd & issue, or orwise as afsd, to the trees or tree for the time being of the settlemt made on the marre of my sd daur, dated, &c., to be held by the trees or tree of the sd settlemt, Upon the trusts & subjt to the powers & provons by & in this my will declared & contained concerng the same legacy & the trust premes representg the same.

(ii.) If the same trust legacy shl be transferred to the trees or tree of the sd settlemt as afsd, the power of appointg new trees throf shl thenceforth be vested in the psons or pson in whom the power of appointg new trees of the sd settlemt is vested (a).

34. I GIVE to A., the wife of B., of &c., [free of duty] if she shl survive me for — calr months, the sum of £—, & if she shl survive me for — calr months, the further sum of £—, & if, &c.

35. I GIVE to A., the wife of B., of, &c., the sum of £ — , [free of duty] & I declare that the same shl not be affected by or be subjt to the trusts declared by the settlemt made on her marre concerng her after-acquired ppty.

36. I GIVE the sum of £— [free of duty] to —, upon condon that if he shl (d) succeed to the Earldom of —, or,

Bequest to married woman not to fall into settlement (b).

The same where form of settlement admits (c). Legacy

(a) See Vol. I., p. 134, note (e).

(b) The object of this provision is to prevent the legacy from becoming subject to the legatee's marriage settlement under the after-acquired property clause, the legacy being divided into instalments, each below the minimum amount fixed by that clause, and each being made contingent so as not to accrue at the same time. Compare the form of gift in *Re Couturier*, [1907] 1 Ch. 470.

Legacy avoiding after-acquired property clause.

(c) This clause will be ineffectual unless the covenant as to after-acquired property contains such a provision as to gifts as in f. 19, p. 563; *Scholfield v. Spooner*, 26 Ch. D. 94; *Re Wharton*, 102 L.T. 531.

(d) Other forms of conditions are, "if he shl become a field officer in his Majesty's Army"; "if he shl be instituted to an ecclesiastical benefice, the net annual value of wch shl exceed the sum of £—"; "if he shl not bfe or within — yrs from my death take the degree of Bachelor of Arts at the University of —"; "if he shl marry a pson who does not profess the — faith, or shl forsake the — faith." See also *ante*, p. 524. As to conditions void as against public policy, see *Egerton v. Earl Brownlow*, 4 H. L. Cas. 1; *Re Sandbrook*, [1912] 2 Ch. 471; *Re Wallace*, [1920] 2 Ch. 274. As to the time within which the condition may be performed, see *Re Packard*, [1920] 1 Ch. 596; *Re Goodwin*, [1924] 2 Ch. 26.

Conditional legacies.

to be repaid on succeeding to a title. "to the Baronetcy now vested in —," he shl repay the same witht intt to my exors, to the intent that the same shl fall into my residuary este.

37. ALL THE [pecuniary] legacies given by this my will or any codl hto (e) shl be pd [delivered (f)] or retained free from all duty [leviable or chargeable at my death (g)], which shl be pd out of my gnl psonal este.

38. I DIRECT that all death duties (if any) leviable on my death in respt of any moys or other ppty given or settled by me [to or upon any child of mine] during the last three yrs of my life & the intt on such duties (h) shl be pd by my exors out of my gnl psonal este.

39. THE LEGACY of £—— hrinbfe given to the sd —— shl be payable in priority to any other pecuniary legacy given by this my will [or any codl hto].

40. THE SEVL pecuniary legacies hrinbfe given to the sd, &c., shl have priority in the order in wch the same are hrinbfe given, but so that legacies given to a class shl have no priority as betn the members of such class.

41. IF THE moys to arise from the sale & conversion hby directed or orwise formg pt of my este shl not be sufficient to pay my funl & testy expses & debts & all the legacies hby given, then the legacies of £—— & £—— hby given to the sd —— & —— shl abate proportionately in exoneron of the remaining legacies.

42. I give the followg legacies charged & raisable exclusively (b) upon & out of the ppty situate, &c., hrinar devised to ——, that is to say, the sum of £—— to ——, &c.

43. I hby charge all the legacies hrinbfe given, on my real este, [situate, &c., hrinar devised to ——] in case of the

(e) See *Re Sealy*, 85 L. T. 451; *Re Trinder*, 56 Sol. J. 74.

(f) See *Re Johnston*, 26 Ch. D. 538.

(g) See as to the duty on settled legacies, *ante*, p. 758, note (f).

(h) The provision in s. 6 (6) of the Finance Act, 1894, that the interest on estate duty forms part of thē duty is repealed by s. 40 of the Finance Act, 1896.

(i) See Fin. (1909–10) Act, 1910, s. 59; *Re Crocker*, [1916] 1 Ch. 25.

(a) See *Marsh v. Evans*, 1 P. Wms. 668.

(b) Such an exclusive charge, or a power of appropriation vested in the executors or trustees, is sometimes desirable to exclude the legatee from a right to take proceedings for general administration by the Court.

deficiency of my psonal este (c), with power for my exors, or, "trees," to raise the amt of such deficiency, togr with the costs of raisg the same, by sale or mtge of such real este, or any pt or pts throf, & so that any such mtge may be for any term of yrs, & with or witht a power of sale, & to execute & do such assuress & things as may be necy or pper for effectuatg any such sale or mtge.

on real estate with directions for raising them (d).

44. IF ANY real or psonal ppty hby specifically given to any pson or psons shl be sold in my lifetime I give to such pson or psons a legacy eql in amt to the net sale moys of such ppty after providg for the costs of sale throf & the dischg of incumbrances thron & of any duties payable in respt of such sale.

Legacy in substitution for specific legacy sold.

(ii.) LEGACIES TO CHARITIES.

1. I GIVE to the — Institution [situate at —] the sum of £—— [free of duty], to be applicable for the general pposes of such institution; & I declare that the receipt of the person who professes to be the Treasurer or other pper officer for the time being of such institution shl be a sufficient discharge for the same.

Legacy to a charity (e).

(c) As to assets for payment of general legacies, see A. E. Act, 1925, s. 34 (3), and First Schedule, Part II.; Robbins & Maw, 4th ed., 324; and see *Re Balls*, [1909] 1 Ch. 791.

(d) The form in the text differs from the statutory power given by s. 40 of the A. E. Act, 1925, in that the latter power only enables personal representatives to limit a term of years to trustees upon trust to raise the legacies thereout whilst the power in the text is to raise the money direct without the intervention of trustees. Whichever method is adopted a purchaser or mortgagee is protected by s. 17 of the T. Act, 1925, from seeing that the money is wanted or that no more than is wanted is raised or as to its application.

(e) The Mortmain, &c., Act, 1891, which came into operation on the 5th August, 1891, has altogether done away with the former statutory prohibition of testamentary gifts of land and money secured on land or other personal estate connected with or savouring of realty to charitable uses; but by s. 5 any land (which by s. 3 includes hereditaments corporeal or incorporeal of any tenure and a reversionary interest: *Re Hume*, [1895] 1 Ch. 422; but see *Re Ryland*, [1903] 1 Ch. 467) so given is to be sold within one year from the testator's death, or such extended time as may be allowed by the Court or the Charity Commissioners, unless the retention is sanctioned by the Court or the Charity Commissioners as being required for actual occupation for the purposes of the charity and not as an investment (s. 8; *Re Sutton*, [1901] 2 Ch. 640). If not sold within the

Gifts by will to charities.

Several
chari-
table
legacies.

2. I GIVE the followg charitable legacies [free of duty], that is to say:—

(i.) To the — Socy the sum of £——.

(ii.) To the — Institon the sum of £——, &c.

And I declare that the rect of the person who professes to be the

year, the land is by s. 6 to vest in the official trustee of charity lands and to be sold under the direction of the Commissioners. Land devised on trust for sale, however, is not "land" within the meaning of the Act: *Re Wilkinson*, [1902] 1 Ch. 841; *Re Sidebottom*, [1902] 2 Ch. 389, unless the sale requires consent which is not given within one year from the testator's death; *Re Ryland*, *sup.* As to what gifts of land are excepted from the Mortmain, &c., Acts, see Tyssen's Charitable Bequests, 2nd ed., pp. 44 *et seq.*, and as to gifts for educational purposes, see Education Act, 1921, s. 117.

It is also provided (by s. 7 of the Act of 1891) that where personal estate is by will directed to be laid out in the purchase of land for any charitable use, it is to be held as though there had been no such direction, subject to the like exception (s. 8), where the land is required for actual occupation. Section 7 does not seem to affect a mere power to invest in land. The Act of 1891 may enlarge the scope of an existing will containing a residuary gift to charity of all such parts of the testator's estate as may lawfully be so given; see *Re Bridger*, [1894] 1 Ch. 297; *Re Bennett*, [1920] 1 Ch. at p. 312; cf. *Re Harris*, [1912] 2 Ch. 241. A devise to A. for life with remainder to a charity is valid: see *Re Hume*, [1895] 1 Ch. 422. As to an invalid bequest followed by a gift of residue to a charity, see *Re Rogerson*, [1901] 1 Ch. 715; *Re Barnett*, 24 T. L. R. 788.

The Mortmain Acts are of local application, and therefore only affect land situate in countries to which the provisions of the Acts apply: *Canterbury Corpn. v. Wyburn*, [1895] A. C. 89; *Re Hoyles*, [1910] 2 Ch. 333; [1911] 1 Ch. 179.

Cy-près.

As to whether a legacy for a charitable object fails, or is applicable *cy-près*, see Tyssen's Charitable Bequests, 2nd ed., Ch. XVII. As to the power of the Court to dispense with a condition subsidiary to the main object of the charitable gift, see *Re Robinson*, [1923] 2 Ch. 332.

Perpetuities.

A charitable trust may be perpetual, but, like any other bequest must vest indefeasibly within the time fixed by the rule against perpetuities; *Chamberlayne v. Brockett*, L. R. 8 Ch. 206, 211; Tyssen's Charitable Bequests, 2nd ed., Ch. XIV. But a gift may be made to a charity with a gift over to another charity at a remote period of time: *Re Tyler*, [1891] 3 Ch. 252. Cf. *Re Bowen*, [1893] 2 Ch. 491; *Re Davies*, [1915] 1 Ch. 543; *Re Peel*, [1921] 2 Ch. 218.

Charitable purposes.

"Charity" in its legal sense comprises four principal divisions: (1) trusts for the relief of poverty, (2) trusts for the advancement of education, (3) trusts for the advancement of religion, and (4) trusts for other purposes beneficial to the community: *Commissioners of Income Tax v. Pemsel*, [1891] A. C. at p. 583; *Re Macduff*, [1896] 2 Ch. at p. 466; *Re Drummond*, [1914] 2 Ch. 90; *A.-G. v. Nat. Prov. & Union Bank of England*, [1924] A. C. 262; *Verge v. Somerville*, [1924] A. C. 496.

For instances of valid and invalid charitable trusts, see Tyssen's Charitable Bequests, 2nd ed., 57–118, where the cases are discussed and classified under the four divisions above mentioned.

Treasurer or other proper officer for the time being of the same respective societies & institutions shall be a sufficient discharge for the same respective legacies.

3. I GIVE the sum of £—— [free of duty], to or for such charitable institution or institutions or other charitable object or objects in England as my acting exors or exor may in their or his absolute discretion select (*f*), & to be paid to or for such institutions or objects, if more than one, in such proportions as my said exors or exor may think proper.

Legacies to charities to be selected by executors.

4. I GIVE to the Governors of the Bounty of Queen Anne for the Augmenton of the Maintee of the Poor Clergy the sum of £—— [free of duty], to be applied & disposed of for the augmenton of the living of ——, in the County of ——.

Legacy to the Governors of Queen Anne's Bounty.

5. I GIVE to my trustees the sum of £—— [free of duty] upon trust to invest the same & apply the yearly income thereof for the benefit of the poor & deserving widows in the City of [Bristol] & the County of [Gloucester].

Legacy to be invested for the poor of a town (*g*).

6. I GIVE to the Rector [Vicar] for the time being of the Parish of ——, in the County of ——, the sum of £—— [free of duty], to be distributed by him at his discretion among such of the poor of the said parish as he shall select.

Legacy distributable among the poor of a parish.

7. I GIVE to the person who shall at my death be the Mother Superior [Mother General] of the Sisters of [Charity] at —— the sum of £—— [free of duty] to be applied in furtherance of the charitable works carried on by such sisters, with power to my exors to accept the receipt of such Mother Superior [Mother General] or any person professing to be the Mother Superior

Legacy to a community of women (*h*).

(*f*) It should be made clear whether the power of selection is personal to the persons named as executors so as to be independent of their acting, or is annexed to the office, as in the above form, see *Crawford v. Forshaw*, [1891] 2 Ch. 261; *Re Smith*, [1904] 1 Ch. 139; *Re Willis*, [1921] 1 Ch. 44. The power of selection must not extend to indefinite and non-charitable objects: *Re Clarke*, [1923] 2 Ch. 407.

Selection of charities by executors.

(*g*) Within twelve months from the death of the donor, a Memorial stating the gross annual income, investment, and objects of this gift must be registered with the Clerk of the Peace of the City and the Clerk of the County Council, under s. 2 of 52 Geo. 3, c. 102, as amended by s. 3 (15) of the Local Government Act, 1888; and such clerks are required to notify the same in the London Gazette. But where there is a direction to invest permanently in Government or Public stocks or funds, registration is not required: 52 Geo. 3, c. 102, s. 10.

(*h*) See Tyssen's Charitable Bequests, 2nd ed., p. 82.

[Mother General] or of such other pson or pesons as my exors shl think fit in full exoneron of my exors, And it is my intention that the sd sum of £—— shl be invested by or for the sd sisters of [Charity] & the income only throf applied in furtherance of the charitable works carried on by such sisters.

Legacy to
Roman
Catholic
Bishop.

8. I GIVE to the Roman Catholic Bishop for the time being of the Roman Catholic diocese in which the Chapel [Mission] known as —— is situate the sum of £—— [free of duty], to be applied by him for the benefit of the sd Chapel [Mission] as he shl think fit.

Legacy
to be
applied
in main-
taining
a church,
&c.

9. I GIVE to B. of, &c., the sum of £—— [free of duty], to be expended by him at his absolute disceron for all or any one or more of the followg pposes, namely: the rebuilding, repairing, enlarging, altering, furnishing, & equipping the church [chapel] in ——, & in improving & maintaing the surroundgs throf & the approaches thereto.

Legacy to
charity
condi-
tional on
the repair
of a tomb
(a).

10. I GIVE to the trees for the time being of the charity known as —— the sum of £—— [free of duty] & I commit to their keeping the care and charge of my family vault at —— & I request them to keep the same in good repair & the inscriptions thron legible & to re-build the same when requisite. Failing their compliance with this request I give the sd sum to the Charitable Institution known as —— (b).

Legacy
for repair
of a
church-
yard and
repair of

11. I GIVE to the Rector [Vicar] & Churchwardens for the time being of the Parish of —— in the County of —— the sum of £—— [free of duty] upon trust to invest the same & apply the yearly income throf in keeping the churchyard

Repairs
of tomb.

(a) A gift for the repair of a tomb not forming part of the fabric of a church is not charitable: *Re Vaughan*, 33 Ch. D. 187; *Re Rogerson*, *sup.*; but it is possible practically to ensure that the tomb shall be kept in repair in perpetuity by making a gift to a charity on condition that that charity shall keep the tomb in repair, with a gift over to another charity on the tomb falling out of repair: *Re Tyler*, [1891] 3 Ch. 252. Cf. *Re Davies*, [1915] 1 Ch. 543. A gift to keep a burial ground in repair, and in particular one grave, is valid and the particular trust is ancillary and not separate: *Re Manser*, [1905] 1 Ch. 68. But the trust of a fund to keep in repair a particular tomb in a churchyard and apply the residue in repairing the churchyard generally is void except as to the residue: *Re Vaughan*, *sup.* See the cases collected and discussed in Tyssen's *Charitable Bequests*, 2nd ed., pp. 91 *et seq.*

A gift for the upkeep of a Masonic Temple in memory of a dead son is not within the "tomb" cases; *Re Porter*, [1925] Ch. 746.

(b) See *Re Tyler*, *sup.*

and particularly the grave therein of my late wife in good order (k).

12. I GIVE the sum of £—— [free of duty] to my wife —— absolutely, And I declare it to be my wish, but witht imposg upon her any legal or equitable obligon, condon, trust, or election whatsr, or interferg with her full & absolute right of ppty in that sum, that as soon after my death as may be, she shl if she thinks pper pay & apply the same for the benefit of the charitable objects next hrinar mentd in the mner & to the extent hrin mentd : And if my wife shl predecease me, then I give, &c., *charitable legacies*.

a parti-
cular
grave (l).
Legacy
to wife
for chari-
table
purposes
to save
duty.

ANNUITIES (a).

1. I GIVE to A., of, &c., durg his life, an annuity of £—— [clear of all death duties (b) [& income tax (c) but not super-

Bequest
of an-
nuity.

(k) See *Re Manser, sup.*

(l) See note (a) on preceding page.

(a) An annuity, being a general legacy, is liable to abatement upon a deficiency of the general personal estate rateably with other general legacies : *Re Ross*, [1900] 1 Ch. 162 ; *Re Metcalf*, [1903] 2 Ch. 424 ; and for this purpose an annuity directed to be purchased must be valued as at the testator's death, unless payable from a later date : *Re Robbins*, [1907] 2 Ch. at p. 13. For a form of annuity out of income of residue, see *post*, p. 795, f. 10. As between the annuitant and pecuniary legatees, the rule

Abate-
ment.

(b) A gift of an annuity is subject to legacy or succession duty, according as to whether it is payable out of personal or real estate : see Customs, &c., Act, 1888, s. 21 (2). As to estate duty, see *ante*, p. 725, note (a), and p. 757, note (c) ; *Re Duke of St. Albans*, [1900] 2 Ch. 873.

Death
duties.

(c) Although a direction in a deed that an annuity is to be paid free of income tax is void, see *ante*, p. 561, note, such a direction in a will is valid : *Re Bannerman*, 21 Ch. D. 105 ; *Re Buckle*, [1894] 1 Ch. 286.

Income
tax.

Income tax if not intended to be deducted should be expressly mentioned. It is not enough for this purpose that the annuity is given "without deduction" : *Re Musgrave*, [1916] 2 Ch. 417, 424 ; "clear" : *Re Loveless*, [1918] 2 Ch. 1 ; or "free of all duties" : *Re Saillard*, [1917] 2 Ch. 401. A gift free from income tax is free from super tax as well as ordinary income tax ; *Re Crosse*, [1920] 1 Ch. 240 ; *Re Bowen*, [1925] W. N. 206 ; but see *Re Bates*, [1925] Ch. 157. For the purposes of income tax a sum paid by monthly payments is an annuity ; *Re Cooper*, 62 Sol. J. 230. The annuitant is entitled only to such proportion of relief by way of repayment obtained by him under the Income Tax Acts as the annuity bears to his total income : *Re Pettit*, [1922] 2 Ch. 765.

tax (d)]], to begin from my death (e) & to be payable by eq[ua]l half-yrly, or, " qtrly " paymts, the first paymt thro[ugh] to be made

is the same whether the annuity is in form a simple bequest (*Re Ross*, [1900] 1 Ch. 162), or is coupled, as is proper and convenient for purposes of administration, with an authority or direction to set apart a sufficient fund for securing payment of the annuity out of the annual income (*Re Cottrell*, [1910] 1 Ch. 402; cf. *Re Richardson*, [1915] 1 Ch. 352), or is given in the form of a direction to purchase; and although as a result of the valuation the estate may be sufficient to satisfy the annuity and all the legacies in full: *Re Cottrell, sup.*; *Re Dempster*, [1915] 1 Ch. 795.

As between annuitant and residuary legatee there is no right to have the capital value of the annuity realised and paid to the annuitant: *Wright v. Callender*, 2 De G. M. & G. 652; *Re Cottrell, sup.*, at p. 407. Until a fund has been validly appropriated to meet the annuity and free the residue, the annuity will remain payable out of the income of the residue so far as it goes and, except in those cases where the trusts of residue are such as to charge the annuity exclusively upon income (as to which see *post*, p. 779), any deficiency must be made good out of capital whether settled or not: *Re Grant*, 52 L. J. Ch. 552. There is no right, where the residue is settled, to recoup capital out of future income: *Re Croxon*, [1915] 2 Ch. 290; nor any right to retain surplus income to make good a possible deficiency in a subsequent year: *Re Platt*, [1916] 2 Ch. 563; cf. *Re Street*, 1922 W. N. 291.

It is unnecessary to provide for the apportionment of the annuity at the death of the annuitant: see Apportionment Act, 1870.

Appropriation of fund to answer annuities.

The bequest of an annuity or annuities should be followed by a clause (see *post*, p. 777, f. 15) directing or authorising the trustees to appropriate a fund out of the income of which the annual sum or sums required may be paid, giving the necessary directions in case the income should prove insufficient or more than sufficient for the purpose and providing for the fund falling back into residue as and when the annuity or respective annuities cease. If an imperative direction to appropriate is inserted, the trusts of proceeds of sale and conversion will include a trust to make provision for annuities in the usual form (see *post*, p. 789, f. 3). If, however, a power to appropriate only is inserted, the trusts last referred to will omit all reference to annuities and the trusts declared of the income of the testator's residuary estate will be expressed to be subject to the annuity or annuities (if any) for the time being payable thereout. Sometimes a power to purchase annuities is substituted for a power to appropriate a fund for their payment.

Where there are several annuities it will be more convenient to use f. 7. For a form providing against disclaimer of an annuity by a married woman restrained from anticipation, see *post*, p. 871, note (c).

(d) An annuity should not be given free of super tax as, owing to the incidence of that tax, the result will be, if the annuitant lives long enough, to exhaust the trust fund: *Meeking v. I. R. Commrs.* (1920), 7 Tax Cases, 603.

(e) In the absence of a contrary intention an annuity given by will begins from the testator's death: *Re Robbins*, [1907] 2 Ch. at p. 13; *Re Brunning*, [1909] 1 Ch. 276; but the first payment is not due till a year after it.

at the expiron of six, *or*, “ three ” calr months from my death. *Add f. 16* (i) and (ii), *post*, p. 778, *directing or authorising the trustees to appropriate a fund to answer the annuity (f)*.

2. I GIVE to A., the wife of B. of, &c., durg her life, an annuity of £—— [clear of, &c.] witht power of anticipon to begin, &c., *as in f. 1*. To woman without anticipa-
tion.

3. I GIVE to my wife A. durg her life [widowhood] (*g*) an annuity of £—— [clear of, &c.] to begin, &c., *as in f. 1*, [& so that on re-marre the same shl be witht power of anticipon]. To wife for life or widow-
hood.

4. I GIVE to my wife A. an annuity of £—— [clear of, &c.] durg her widowhood beginning from my death, & in the event of her marrying again then durg the remr of her life a reduced annuity of £—— [clear of, &c.] witht power of anticipon, such respective annuities to be payable by eql half-yrly, *or*, “ qtrly ” paymts. The same reducible on second marriage.

5. I GIVE to A. of, &c., & B., of, &c., & the survor of them, an annuity of £—— [clear of, &c.] durg their joint lives & the life of the survor to begin, &c., *as in f. 1*. To two persons and sur-
vivor (*h*).

6. I GIVE to A. of, &c., if she shl be a spinster at my death an annuity of £—— [clear of, &c.] to begin from my death & to be payable so long as she shl remain a spinster by eql half-yrly paymts, the first paymt throf to be made at the expiron of six calr months from my death if the sd A. shl be then living & a spinster. During spinster-
hood (*i*).

7. I GIVE the followg annuities [clear of, &c.] that is to say :— Several annuities.

(i.) To A. of, &c., an annuity of £—— during his life.

(ii.) To B. of, &c., an annuity of £—— during his life.

Such respective annuities shl begin from my death & be payable, &c., *as in f. 1*.

(*f*) See note on preceding page.

(*g*) *Or* “ durg such period as she shl be living & remain my widow.”

(*h*) As to the effect of the M. W. P. Act, 1882, upon the interest taken by the wife, see *Thornley v. Thornley*, [1893] 2 Ch. at p. 234.

(*i*) This is not open to objection as being in restraint of marriage, see *Heath v. Lewis*, 3 De G. M. & G. 954; but an annuity to a married woman so long as she shall live apart from her husband, is invalid: *Re Moore*, 39 Ch. D. 116; unless it is intended to provide for a wife, already living apart, during the period of her separation: *Re Lovell*, [1920] 1 Ch. 122.

General imposition of restraint.

Annuities free of duty and income tax.

Bequest of annuity charged on real or leasehold property (b).

Charge of several annuities on real and leasehold property.

Provision for cesser of annuity on alienation.

Recovery of arrears.

8. I DECLARE that all annuities hereinbefore given to females shall during coverture be without power of anticipation.

9. I DECLARE that [all] the annuities hereinbefore given [to the said — & —] shall be paid clear of all death duties [& income tax (a) but not super tax].

10. I GIVE to A. of, &c., during his life an annuity or equitable rentcharge of £ — [clear of, &c. (a)], to begin from my death, & to be payable, &c., as in f. 1, & [together with the duty thereon] to be charged upon, & issuing & payable out of my freehold, or, "leasehold," messes, lands, &c., hereinbefore devised [bequeathed] to D., of, &c., And subject & charged as aforesaid, I DEVISE, [BEQUEATH] &c.

11. THE SAID annuities hereinbefore given to the said A., B., & C. [& the duty on such of them as are given free of duty], shall be charged upon & issuing & payable out of all my real & leasehold estates, or, "the freehold & leasehold messes, lands, & property, situate, &c., hereinbefore devised & bequeathed to D., of, &c.," [& shall be exclusively so charged in exoneration of my general estate, or, "in aid of my general personal estate, which shall be the primary fund for the payment thereof "]; And subject to the payment of the said respective annuities [& duty] so charged as aforesaid, & to all powers & remedies for the recovery thereof, I DEVISE & BEQUEATH, &c.

12. (i.) IF ANY act or event shall be done or happen either before or after my death (c) whereby the annuity hereby given to the said A.

(a) See *ante*, p. 773, note (c), and p. 774, note (d).

(b) As to the distinction between a rentcharge and a personal annuity charged on real estate, see *Re Trenchard*, [1905] 1 Ch. 82; and as to what arrears of an annuity charged on land are recoverable, see *Re Jordison*, [1922] 1 Ch. 440. An annuitant or owner of an equitable rentcharge can recover arrears by distress or entry, or demise the land for a term to trustees on trust to raise and pay the arrears, but any such term will only be an equitable term: L. P. Act, 1925, s. 121. The devise subject to the annuity or equitable rentcharge makes the land settled land under s. 1 (1) (v) of the S. L. Act, 1925, and though by s. 1 (1) of the L. P. (Amendment) Act, 1926, a person so entitled can sell the land subject to the prior interest as though it were not settled, s. 36 (10) of the A. E. Act, 1925, does not enable an assent to be made subject thereto. A vesting assent under the S. L. Act will therefore be necessary. Being settled land the better remedy of the annuitant or owner of the equitable rentcharge whose payments have fallen into arrears, is to call upon the devisee in fee or other estate owner to create a legal mortgage under s. 16 of the S. L. Act, 1925, for raising the amount in arrear.

(c) If the annuitant is a married woman, add here "while the said A. shall be discovert &c."

or any pt throf wd if belongg absolutely to him [her] become vested in (d) or charged in favour of some other pson or psons (e) then such annuity shl cease as if he [she] were dead, or shl be held by my trees upon protective trusts for the sd A. durg his life. (ii.) PROVD ALWAYS that my trees shl not be liable or responsible for payg the sd annuity to the sd A. after the failure or determinon durg his [her] lifetime of the trust hrinbfe declared in his [her] favour unless & until my trees shl have reced express notice of the act or event causg such failure or determinon (f).

13. I direct my trees to pay an annuity of £—— upon protective trusts for the benefit of A. durg his life. PROVD ALWAYS, &c., as in f. 12 (ii), *sup.*

Payment of annuity on protective trusts (a).
General proviso for cesser of annuities on alienation.

14. IF ANY act or event shl be done or happen either bfe or after my death whereby an annuity hrinbfe given to any pson or any pt throf wd, if belongg to him or her absolutely, become vested in or charged in favour of some other pson or psons, then such annuity shl cease as if he or she were dead, or, “such annuity shl be held by my trees on protective trusts for the benefit of the pson to whom it is hby given durg his or her life. PROVD ALWAYS, &c., as in f. 12 (ii.), *sup.*”

15. MY TREES may at their discretion raise out of the income of my residuary este in every yr, beginning from my death, durg the life of —— of, &c., or durg any shorter period or periods, either continuous or discontinuous, any sum or sums of moy not exceedg in the whole the sum of £—— in any one yr [free of duty] & may pay the same by qtrly, monthly, or weekly paymts on protective trusts for the sd —— or apply the same for his maintee, support, or benefit, at the discron of my trees durg his life, & so much of the same as shl not be so paid or applied shl sink into & be applied as pt of the income of my residuary este. [And I declare that if any action or proceeding shl be instituted for the ppose of administerg my este or executg the trusts of my will the power

Power to raise and pay annual sums for benefit of a spendthrift.

(d) See *Re Levinstein*, [1921] 2 Ch. 251.

(e) Person includes a corporation: L. P. Act, 1925, s. 61 (b).

(f) See *Re Long*, [1901] W. N. 166.

(a) See *ante*, p. 517, note (a). Forms 12 and 14 are intended to meet the case of an annuitant having become bankrupt or incumbered his annuity before it has commenced to be payable, a case to which s. 33 of the T. Act, 1925, does not apply.

lastly hrinbfe contd shl be exercisable by my trees witht being subjt to the control of the Court (b).]

Direction
or power
to appro-
priate
fund to
answer an
annuity
or annui-
ties (c).

16. (i.) MY TREES shl [may at any time with a view to the due administron or distribution of my este if it shl be deemed convenient so to do] appropriate & retain a sufficient pt of my este, or of the investmts representg the same [such investmts being investmtsupon wch trust funds or cash under the control or subjt to the order of the High Court of Justice may for the time being be authorised by law to be investèd, or, “of the nature hrinar authorised as investmts of trust moys under this my Will”], as a fund for answerg by the annual income throf the sd [any] annuity [annuities] hrinbfe given [to the sd A.] & the expses incidental to the paymt throf [resply], but witht prejudice to the powers of sale & investmt & transposg investmts hrinar contained, And I declare that if the annual income of the appropriated fund shl at the time of appropriation be sufficient to satisfy the sd [such] annuity [annuities or such of them as shl for the time being be payable under this my Will], [such appropriation shl be a complete satisfson of the trust or direction hrinar declared to provide for such annuity [annuities], & that (d)] the annuitant shall thrafter have no claim, or, “no annuitant shl have any claim,” against or right to resort to any pt of my este (other than the sd appropriated fund) for the paymt of his [or her] annuity & further that if the income of the appropriated fund shl at any time prove insufficient for paymt in full of [any of] the sd [such] annuity [annuities] resort

(b) The Court will not interfere with the *bonâ fide* exercise by the trustees of their discretion: *Brophy v. Bellamy*, L. R. 8 Ch. 798; *Re Lofthouse*, 29 Ch. D. 921; *Re Bryant*, [1894] 1 Ch. 324; *Re Knollys*, [1912] 2 Ch. 357.

Appropriation.

(c) Apart from any express power in the will, personal representatives have power under s. 41 of the A. E. Act, 1925, to make an appropriation to meet an annuity (see sub-s. (9) of that section), but only with the consent of the person beneficially entitled. As to an appropriation of the kind in the text being effectual to free the residue, and as to the trustees' power of investment for the purpose of securing the annuities and of varying investments, see *Re Outhwaite*, [1891] 3 Ch. 494; *Re Street*, [1922] W. N. 291. As to the power of the Court to direct an appropriation out of residue to secure annuities, see *Harbin v. Masterman*, [1896] 1 Ch. 351; *Re Earle*, [1924] W. N. 26. See further as to appropriation, *post*, p. 833, note.

As to the effect of a direction to set aside a fund where the estate is insufficient, see *Wright v. Callender*, 2 De G. M. & G. 652; *Re Cottrell*, [1910] 1 Ch. 402, and *ante*, p. 774, note.

(d) See *ante*, p. 774, note.

may be had to the capl throf from time to time to make good such deficiency, & the surplus income (if any) of the sd fund from time to time remaing after paymt of the sd [such] annuity [annuities] shl be applicable as income of my residuary este (e).

(ii.) As & when the sd annuity [any of the sd annuities] shl cease, the appropriated fund or so much throf as shl not have been applied in paymt of the sd annuity [annuities or any of them & shl not be required to answer any subsisting annuity] shl sink into & form pt of my residuary este, or, “ shl revert to & become subj't to the trusts hby declared concerng the trust premes out of wch the same shl have been appropriated as afsd ” & until the sd [any such] annuity shl be provd for in mner afsd the same shl be pd out of the income of my residuary este (a).

17. MY TREES may at any time or times, if & when they shl consider it convenient for the administron, windg-up, or distribution of my este, or for any other reason, pchase annuities in the names of the sevl annuitants, or in the names of my trees, from Governmt or any public Co [or any private pson or psons, but so that any annuity so pchased from a private pson or psons shl be seed on real or leasehd este], for the ppose of ansverg or satisfying the respective annuities hrinbfe given, or any of them; And any annuity so pchased in the names of my trees shl be pd or applied by them to the pson or psons for the pposes & in the mner to & for & in wch the annuity in respt of wch the same was pchased is hrinbfe directed to be pd or applied.

Power to purchase annuities.

18. I DIRECT my trees to pchase in their names from Governmt or any public Co an annuity of £—— [free of duty] for the life of, *annuitant*, to commence from my death, & to be

Direction to purchase an annuity.

(e) A direction to accumulate surplus income, after providing for an annuity, is void as against a residuary legatee absolutely entitled: *Wharton v. Masterman*, [1895] A. C. 186; *Re Trevanion*, [1910] 2 Ch. 538. This is not so, however, where the residuary legatees are married women restrained from anticipation: *Re Spencer*, 30 Ch. D. 183. See as to the devolution of surplus income accumulated for longer than is permitted, *Rè Hawkins*, [1916] 2 Ch. 570; *Re Garside*, [1919] 1 Ch. 132.

(a) The trust for payment out of income may not prevent a deficiency being charged on the corpus if it is preceded by an absolute gift of the annuity: *Re Mason*, 8 Ch. D. 411; or if it is followed by a gift over subject to the annuity: *Re Howarth*, [1909] 2 Ch. 19; *Re Watkins*, [1911] 1 Ch. 1; *Re Young*, [1912] 2 Ch. 479. See also 55 Sol. J., 73; *Re Boulcott*, *ib.* 313.

Charge of annuity on corpus.

Variation
where it
is to be
inalien-
able (b).

payable half-yrly [qtrly], & to pay the same when pchased, & in the meantime in lieu throf to pay a like annuity out of the income of my residuary este, to the sd, *annuitant*, [but so that he shl not be allowed to have the value of such annuity in lieu throf, & so that if any act or event shl be done or happen whereby the sd annuity or any pt throf wd if belongg to him absolutely become vested in or charged in favour of some other pson or psons or a corporon, the sd annuity (whether the same shl have been pchased or not) shl cease to be payable to him, & shl sink into & form pt of the income of my residuary este].

Power to
continue
allow-
ances
paid by
testator.

19. MY TREES may at their discrion continue any annuities or charitable or other allowces, donations, or subscriptions wch I shl have pd in my lifetime, or any pt throf, [or shl within one yr before my death have promised to pay], durg such time or times, not exceedg, &c. (c), as they may think fit.

DEED POLL *by FEMALE ANNUITANT under a WILL*
ANNULLING RESTRAINT on ANTICIPATION and AUTHO-
RISING *the PURCHASE of a GOVERNMENT ANNUITY (d).*

THIS DEED OF DECLARATION made by me A. of ——. WHAS I am now unmarried & am desirous that the annuity of £—— bequeathed to me for my life by the will, dated, &c., & proved, &c., of X. who died on the — day of — shd be satisfied & provd by the pchase of a Governmt annuity of that

Right of
annuitant
to value
of an-
nuity.

(b) A direction to purchase an annuity is a legacy of the amount required for the purchase : *Re Robbins*, [1907] 2 Ch. 8 ; *Re Brunning*, [1909] 1 Ch. 276. A direction that the annuitant is not to have the value of the annuity is void: *Stokes v. Cheek*, 28 Beav. 620 ; unless there is a gift over (*Power v. Hayne*, L. R. 8 Eq. 262 ; *Re Draper*, 58 L. T. 942) or a proviso for cesser (*Hatton v. May*, 3 Ch. D. 148) on alienation, but such a proviso is repugnant and void if the annuity is to be purchased in the name of the annuitant himself : *Hunt-Foulston v. Furber*, 3 Ch. D. 285. Where the direction is to purchase an annuity from the Government or any public company, the annuitant can only have the purchase price of a company's annuity as being cheaper than a Government annuity : *Re Smith*, 67 Sol. J. 457.

(c) The safe course is to confine this power within the limits laid down by the rule against perpetuities.

(d) It is of course competent to a woman whilst discoverd to abrogate the prospective restraint on anticipation, see *Tully v. Armstrong*, 4 Myl. & Cr. 406 ; *Wright v. Wright*, 2 J. & H. 647. This deed requires a 10s. stamp.

amount in my own name & that in order to enable such pchase to be legally effected the restraint on anticipation conferred on me by the sd will in the event of my marre shd be removed. Now THIS DEED WITNESSETH that I do hby direct (e) & declare that in the event of my marre the sd annuity & the annuity to be pchased in satisfon throf shl belong to me for my separate use but shl be free from such restraint upon anticipation as afsd wch I hrby abrogate & make void. AND I hrby authorise & request Y. as exor. of the sd will of the sd X. to pchase a Governmt annuity in my name in satisfon of the sd annuity accordgly.

IN WITNESS, &c.

GIFTS OF RESIDUE.

1. I DEVISE & bequeath all the real & psonal ppty whatsr & whersr of or to wch I shl be seised, possed or entitled at my death or over wch I shl then have a general power of apptmt or disposon by will (a), or of wch I shl then be tenant

General
devise
and
bequest.

(e) See *Re Chrimes*, [1917] 1 Ch. 30.

(a) A general devise or bequest of real or personal estate operates without express words, under s. 27 of the Wills Act, 1837, as an exercise of any *general* power of appointment vested in the testator, unless a contrary intention appears: *Re Jacob*, [1907] 1 Ch. 445; *Re Jarrett*, [1919] 1 Ch. 366; and will so operate, to the full extent of the power, where it is limited to a specified amount: *Re Jones*, 34 Ch. D. 65; but it is usual, in order to preclude doubt, to refer expressly to *general* powers. See the notes to s. 27 in *Hayes & Jarman*, 14th ed., pp. 63 *et seq.* A will may operate as an exercise of a general power subsequently created and coming into operation before the testator's death: *Boyes v. Cook*, 14 Ch. D. 53; *Re Hernando*, 27 Ch. D. 284; *Airey v. Bower*, 12 App. Cas. 263; *secus*, where the power does not arise till after his death: *Jones v. Southall*, 32 Beav. 31. As to a power exercisable in favour of all the world except certain specified objects, see *Re Byron*, [1891] 3 Ch. 474.

Resi-
duary
gift
operating
as exer-
cise of
power of
appoint-
ment.

As to the exercise of powers by foreign wills, see *ante*, p. 585, note (a).

A general bequest not referring either to the particular power or the property will not, under s. 27 of the Wills Act, 1837, operate as an exercise of a power of revocation and new appointment: *Charles v. Burke*, 43 Ch. D. 223, n.; *Re Brace*, [1891] 2 Ch. 671; *Re Goulding*, 48 W. R. 183; or a power exercisable only by a will expressly referring to the power or the property: *Re Tarrant*, 58 L. J. Ch. 780; *Phillips v. Cayley*, 43 Ch. D. 222; *Re Davies*, [1892] 3 Ch. 63; but a gift of residue "over which I shl have any power of disposition by will" operates as a will expressly referring to such a power: *Re Lane*, [1908] 2 Ch. 581; and see *Re Barker's Settlement*, [1920] 1 Ch. 527.

Powers
of revoca-
tion, &c.

Where power is given, first to create the property to be appointed (e.g. by charging a sum on real estate), and secondly to appoint it when created, a general devise and bequest will not suffice to execute it, and must therefore be accompanied by words expressly creating the property: *Re Salvin*, [1906] 2 Ch. 459; but where the power is to raise a sum which is in effect charged by the instrument giving the power, the general devise and bequest will suffice: *Re Jones*, 34 Ch. D. 65; *Re Wilkinson*, [1910] 2 Ch. 216.

Ap-
pointed
fund
assets.

Real and personal estate of which a testator disposes by will in pursuance of any general power of appointment, including the statutory powers conferred by s. 176 of the L. P. Act, 1925, to dispose of entailed interests, are assets to meet all his liabilities: A. E. Act, 1925, s. 32. All such real property vests in his personal representatives: ss. 1 (1) and 3 (2).

The question whether when a general power of appointment is exercised by the will, even though only partially or ineffectually, the property subject to the power becomes part of the testator's assets for all purposes, is discussed in *Re Boyd*, [1897] 2 Ch. 232; see also *Re Marten*, [1902] 1 Ch. 314. A testator having a general power and directing a certain application of his property, must be taken to exercise the power to the extent to which the direction is effectual: *Re Davies*, L. R. 13 Eq. 163; *Re Seabrook*, [1911] 1 Ch. 151; *Re Russell Skinner*, [1924] W. N. 65.

Special
powers.

A general devise and bequest referring to powers of appointment: *Re Swinburne*, 27 Ch. D. 696 (observed upon in *Re Cotton*, 40 Ch. D. 41); *Von Brockdorff v. Malcolm*, 30 Ch. D. 172; *Re Mayhew*, [1901] 1 Ch. 677; *Kent v. Kent*, [1902] P. 108; *Wrigley v. Lowndes*, [1908] P. 348; *Re Ackerley*, [1913] 1 Ch. 510; *Re Slack's Settlement*, [1923] 2 Ch. 359; and a mere general devise or bequest without any express reference to powers: *Re Wait* 30 Ch. D. 617; *Re Mills*, 34 Ch. D. 186; *Re Williams*, 42 Ch. D. 93; *Re Huddleston*, [1894] 3 Ch. 595; *Re Sharland*, [1899] 2 Ch. 537; may, if there is a sufficient indication of intention, operate as an exercise of a special power. For cases in which it was held that there was no intention to exercise the power, see *Re Weston*, [1906] 2 Ch. 620; *Re Sanderson*, 56 Sol. J. 291. It cannot apparently exercise a special power over personalty created after the date of the will unless the property is referred to: *Re Hayes*, [1901] 2 Ch. 529.

Special
power.

It is sometimes forgotten that the presumption is against a general devise or bequest operating as the execution of a special power. Where a testator wishes that property appointed by him under a special power should devolve with his own property, the appointment should be made by a separate clause in the will: see *post*, Prec. XXI., p. 899. If the trusts of the appointed property are declared by reference to the trusts of the testator's own property, and those trusts are the common trusts for conversion, payment of debts, &c., and for the investment of the net proceeds on beneficial trusts, the proper reference is: "Upon the trusts & with & subj to the powers & provns hby declared concerng the investmts hby directed to be made of the proceeds of conversion hrinbfe directed of my este after making the paymts hrinbfe directed to be made throuth."

Care must be taken that the objects of the trust are also objects of the power. It must also be remembered that trusts of the testator's own property, which are valid, may, when applied to the appointed property be beyond the scope of his power (see *Re Weston's Settlement*, [1906] 2 Ch.

in tail in posson (b), except ppty orwise disposed of (c) by this my will or any codl hto (d), UNTO my trees, Upon the trusts & with & subjt to the powers & provons hrinar declared of & concerning the same, that is to say, &c., or, "to A., of — for his own benefit absolutely."

2. I GIVE all my ppty not orwise disposed of by this my will (f) to my trees on the trusts hrinar declared concerning the same, that is to say, &c., or, "to A. of — for his own benefit absolutely."

The same.
Short
form (e).

3. I DEVISE ALL my freehd [manors, lordships, reputed manors or lordships, messes, farms, lands, tithes, rents,

Residu-
ary
devise of

at pp. 625, 626), or fail as being too remote; and care must be taken that the appointment does not fail as amounting to a delegation of the original power; see Vol. I. pp. 86 *et seq.*

In the case of the exercise of a *general* testamentary power, time, under the rule against perpetuities, runs from the appointor's death, and not from the date of the creation of the power; and the circumstance that the donee of the power is a married woman makes no difference: *Rous v. Jackson*, 29 Ch. D. 521; not following *Re Powell*, 39 L. J. Ch. 188 (a case which was opposed to the previously generally received opinion, and was calculated to cause much inconvenience, and which may be taken not to be law in this country, though followed in America); see 134 L. T. Newsp. 287; 135 *ib.*, 493. The validation of gifts void for remoteness by reason of being made to depend upon beneficiaries attaining a greater age than twenty-one years which is effected by s. 163 of the L. P. Act, 1925, would not as a rule save such appointments.

Rule
against
perpetui-
ties.

(b) See L. P. Act, 1925, s. 176.

(c) A gift of all the "residue" of the testator's real and personal estate (*Greville v. Browne*, 7 H. L. Cas. 689) or of all the real and personal estate "not otherwise disposed of" (*Re Bawden*, [1894] 1 Ch. 693; and see *Re Smith*, [1899] 1 Ch. 365; *Re Balls*, [1909] 1 Ch. 791) has the effect of charging the legacies on the real estate. As to the meaning of "residue," see *Re Mason*, [1901] 1 Ch. 619.

Charge of
legacies
by re-
siduary
gift.

(d) Where the property is given to trustees but not in trust for sale and payment of debts, &c., out of the proceeds, insert here "subjt to & after paymt out of my psonal este, [or in case of deficiency throf, out of my real este] of my funl & testy expses & debts, & the legacies & annuities bequeathed by this my will, or any codl hto, & all death duties, etc. as in f. 3, *post*, p. 789. Where the property is not given to trustees say simply "subjt to & after paymt of my funl & testy expses," &c. As to the effect of the clause in this note, see *post*, p. 789, notes.

(e) See Goodeve, R. P., 5th ed., 35; *Hill v. Brown*, [1894] A. C. 125.

(f) Where the trusts do not provide for payment of the funeral, &c., expenses, debts and legacies insert here "subjt to & after paymt of my funl & testy expses," &c., as in note (d), *supra*.

freeholds
to bene-
ficiary.

advowsons, tenements &] ppty situate [arising] & being in the sevl parishes of, &c., or elsewhere in the sevl Counties of, &c., with their & every of their rights, royalties, members & appurts & all other estes & ppty of freehd tenure not orwise disposed of by this my will or any codl hto, of or to wch I may at my death be seised or entitled or over wch I may have any absolute power of disposition exercisable by will [or for brevity, "ALL my freehd estes & ppty whatsr & wheresr not orwise disposed of"] To A. of, &c., in fee simple.

Realty
only (g).

4. I DEVISE all the real este [includg chattels real] of or to wch I shl at my death be seised, possed or entitled, or over wch I shl then have a general power of apptmt or disposition by will, or of wch I shl then be tenant in tail in posson (except ppty orwise disposed of by this my will or by any codl hto) (a), UNTO my trees in fee simple, Upon the trusts, &c., as in f. 1.

Person-
alty only.

5. I GIVE all the psonal ppty of or to wch I shl be possed or entitled at my death or over wch I shl then have a general power of apptmt by will or of wch I shl then be tenant in tail in posson [except chattels real &] except ppty by this my will or by any codl hto orwise disposed of (b) to my trees, Upon the trusts, &c., as in f. 1, or, "to A., of —, &c."

Devise
and be-
quest to
executors
absolu-
tely to
carry out
arrange-
ments
dehors
the will.

6. I DEVISE & bequeath all the real & psonal este (whether in posson, reversion, remr, or expectancy) over wch I have or may hrafter acquire any power of disposition by will, or of wch I shl at my death be tenant in tail in posson, to my exors absolutely, And I declare that in makg them universal legatees & devisees my object has been to simplify the windg up of my

(g) A general devise of "land" will pass leaseholds unless a contrary intention is shown, see Wills Act, 1837, s. 26; but a gift of "real estates" will not pass leaseholds for years: *Butler v. Butler*, 28 Ch. D. 66, distinguished in *Re Holt*, [1921] 2 Ch. 17. If leaseholds are not intended to be included they should be expressly excepted.

Un-
divided
share in
proceeds
of sale.

An undivided share in the proceeds of sale of land held upon the statutory trusts will so long as the land remains unsold pass under a general devise of real estate: *Re Glassington*, [1906] 2 Ch. 305.

(a) Where it is intended that legacies shall be paid out of real estate in case of a deficiency of personal estate, insert here "charged in aid of my psonal este with the paymt of my funl & testy expses," &c., as in note (d), on last page.

(b) Where the trusts do not provide for the payment of the funeral, &c., expenses, debts and legacies, insert here, "Subjt to & after paymt of my funl & testy expses," &c., as in note (d), on last page.

affairs & the arrangements under conson with regard to my estates, And witht in any way derogatg from the absolute & unconditional gift made to them or imposg any obligon or responsibility upon them, I hope that it may be possible for them to carry out the wishes expressed in any existing or future letter or memorandum signed by me (c) & deposited with this my will or left among my papers at my death.

CONVERSION AND INVESTMENT.

1. UPON TRUST that my trees, shl sell, call in, collect & convert into moy the sd real & psonal ppty at such time or times, & in such mner as they shl think fit (but as to reversionary ppty not until it falls into posson, unless it shl

Trust for sale and conversion of real and personal estate (a).

(c) A memorandum or letter thus referred to cannot be admitted to probate: *University College of North Wales v. Taylor*, [1908] P. 140; and does not impose any restriction upon the absolute gift to the legatees: *S. C. sub. nom. Re Williams*, 24 T. L. R. 716; see *ante*, p. 744, note (d). As to secret trusts, see Jarman, 6th ed., 911.

Reference to letter.

(a) It is no longer desirable to devise real estate to trustees and to confer upon them a power of sale. Such a power operates under s. 1 (7) of the L. P. Act, 1925, as an equitable power only and is incapable of being exercised to create more than an equitable interest. Where the will creates a settlement within the meaning of the S. L. Act, 1925, any powers other than powers of revocation and appointment, relating to the settled land and conferred upon the trustees are exercisable by the tenant for life: S. L. Act, 1925, s. 108 (2). Where a mixed fund of realty and personalty is to be dealt with, a trust for sale is the most convenient way of effecting the disposition especially if, as is often the case, the whole property is to be divided into shares after the death of a life tenant. The personal representatives must assent to the vesting of the property in the trustees whether or not they are the same persons: see Vol. I., Prec. XVII., p. 1072. See further as to trusts for sale and the protection afforded to purchasers from trustees, *ante*, p. 498, and as to the powers of management of trustees for sale, *ante*, p. 547.

Trust for sale for payment of debts.

Where recourse to the real estate for the payment of debts or testamentary expenses is necessary the sale will be made by the personal representatives unless they have assented to the vesting of the property in the trustees: see Vol. I., p. 567, note (a).

A testator sometimes desires to prohibit the sale of his estates, but the powers of the S. L. Act, 1925, cannot be excluded (see s. 106); and such a prohibition cannot be entirely effectual. The most effective check is to use the machinery of a trust for sale and to require the consents to the sale of two persons other than the trustees: see *ante*, p. 546.

Prohibition of sale.

Power to
postpone.

appear to my trees that an earlier sale would be benefit (b), with power to postpone (c) the sale, call in or conversion of the whole or any pt or pts of the sd ppty [includg leasehds or other ppty of a terminable hazardous (d) or wastg nature] durg such period as they shl think pper, & to retain the same or any pt throf in its present form of investmt, witht being responsible for loss, And I direct that the income (e) of such of

Income
until con-
version.

(b) If desired, the rest of this clause may be omitted and full forms giving power to postpone the sale and declaring the trusts of income until sale inserted later. Some practitioners break off the trusts at this point in order to introduce details of the trust for sale; but the more usual practice is to insert these clauses after the beneficial trusts have been declared.

Power to
postpone.

(c) The statutory power of postponement only applies to trusts for sale of land: L. P. Act, 1925, s. 25 (1). Such a power must therefore always be expressly inserted in the case of residue. A discretionary power to trustees to postpone conversion must be consciously exercised: *Rowlls v. Bebb*, [1900] 2 Ch. 107; by all the trustees: *Re Roth*, 74 L. T. 50; *Re Hilton*, [1909] 2 Ch. 548; and if so exercised operates to exclude the general rule that executors and trustees are liable for loss occasioned by the non-conversion of unauthorised securities within a reasonable time, usually fixed at one year from the testator's death: *Re Norrington*, 13 Ch. D. 654; *Re Schneider*, 22 T. L. R. 223; see also *Grayburn v. Clarkson*, L. R. 3 Ch. 605; *Sculthorpe v. Tipper*, L. R. 13 Eq. 232. The presumption is that if trustees postpone conversion, they have properly exercised their discretion: *Re Oddy*, 104 L. T. 128. They are not bound to sell within the year to raise a settled legacy if there is express power to postpone: *Re Charteris*, [1917] 2 Ch. 379, 393; cf. *Re Sandys*, [1916] 1 Ch. 511. And see as to the obligations of the trustees *Tempest v. Lord Camoys*, 21 Ch. D. 571, 578; *Re Lapine*, [1892] 1 Ch. 210, 219; *Re Bailey*, 61 Sol. J. 398.

A power to postpone the sale of property held upon trust for sale and to "retain the same or any part thereof in its present state of investment" has been held to enable trustees to retain shares in a new company on reconstruction or upon cancellation of the old shares: *Re Smith*, [1902] 2 Ch. 667, distinguished in *Re Anson*, [1907] 2 Ch. 424. As to trustees carrying on a business, see *ante*, p. 751, note (b). A tenant for life of an unpaid settled legacy is allowed interest at 5 p.c. where the trustees have properly exercised their discretion to postpone conversion: *Re Brinton*, [1923] W. N. 195.

As to the duration of a discretionary power of postponement, see *Re Horsnaill*, [1909] 1 Ch. 631; *Re Kipping*, [1914] 1 Ch. 62; *Re Marshall*, *ib.* 192; *Re Craven*, *ib.* 358.

(d) A hazardous is not necessarily a wasting security: *Re Bates*, [1907] 1 Ch. 22.

(e) This includes profits of a business carried on by the executors; *Re Elford*, [1910] 1 Ch. 814. A gift of the whole income until sale does not exclude the Apportionment Act, 1870: *Re Edwards*, [1918] 1 Ch. 142, and note, *ibid.*, p. 145.

the same premes as for the time being shl remain unsold (*f*) shl as well durg the first yr after my death as afterwards be applied as if the same were income arising from investmts hrinar directed to be made of the proceeds of sale throf, & that no reversionary (*g*) or other ppty not actually producing income shl be treated as producing income for the pposes of this my will (*h*).

(*f*) Notwithstanding this direction income must bear its proper proportion with capital of the debts legacies and other charges of a capital nature in accordance with the rule in *Allhusen v. Whittell*, L. R. 4 Eq. 295. That rule is intended to secure that where residue is limited to persons in succession, their successive enjoyment shall be an enjoyment of the same fund: *Re McEuen*, [1913] 2 Ch. 704; its effect being to deprive the tenant for life of the income of such a sum as together with the income on that sum will be sufficient to discharge the capital charges.

Rule in
Allhusen
v.
Whittell.

The rule applies to payments made in subsequent years as well as to payments made within the first year from the testator's death: see *Re Wills*, [1915] 1 Ch. 769 explaining *Re McEuen*, *sup.*; *Re Waller*, [1916] 1 Ch. 153. The rule does not apply to an absolute gift with an executory gift over: *Re Hanbury*, 101 L. T. 32; and see *Barnardo's Homes v. Special Income Tax Commrs.*, [1921] 2 A. C. 1, 10. See Law Quarterly Review, Vol. XXX., No. 120, p. 481, and Vol. XXXII., No. 126, p. 208.

As interpreted by Sargant, J., in the first three cases cited the rule operates fairly between tenant for life and remainderman, and should not be excluded except upon express instructions. If it is desired to exclude the rule say: "I direct that the income of such of the same premes as for the time being shl remain unsold (including the income of ppty subsequently required for paymt of my funeral & testamentary expenses & debts & the legacies, duties [& other moys] in paymt whrof the proceeds of such sale calling in & conversion are hrinar directed to be applied) shl from my death be applied as if the same were income arising from investmts hrinar directed to be made of the proceeds of sale throf & that no reversionary ppty, &c., as in text." In the trust of the proceeds of sale, f. 3, p. 789, say: "my [real &] personal ppty (other than & except income from any pt throf produced previously to such sale & conversion) pay, &c., adding at the end of the form, "my intention being that all such paymts shl be discharged out of the capital of my este witht recourse to any income arising thrfrom any rule of equity to the contrary notwithstanding," and in the trust for investment, f. 4, p. 791, say: "invest the residue of the sd moys other than afsd."

Clause
excluding
the rule.

(*g*) See *Re Hubbuck*, [1896] 1 Ch. 754; *Rowlls v. Bebb*, [1900] 2 Ch. 107; *Re Lewis*, [1907] 2 Ch. 296.

(*h*) Where the whole or any part of the residue of the testator's personal estate is settled, the tenant for life is entitled to the income of authorised investments not required for the payment of debts: *Allhusen v. Whittell*, L. R. 4 Eq. 295; but unauthorised investments other than land must in the

Income of
uncon-
verted
property.

absence of express provision or some indication of intention to the contrary (see *Re Evans' Will Trusts*, [1921] 2 Ch. 309), be sold in accordance with the rule in *Howe v. Lord Dartmouth* (7 Ves. 137; 2 White & T. L. C.; restated and explained in *Macdonald v. Irvine*, 8 Ch. D. 101; see also 22 L. Q. R. 285; Gover on Capital and Income, 2nd ed., 137, *et seq.*), and the proceeds invested in securities authorised by law or by the particular will for the investment of trust funds. In lieu of the actual income of unauthorised securities, the tenant for life is entitled, in accordance with the rule laid down in *Dimes v. Scott*, 4 Russ. 195, and *Brown v. Gellatly*, L. R. 2 Ch. 751, to a sum representing interest at a fixed rate on their capital value from the testator's death. As to the rate of interest allowed, see *Re Lynch Blossie*, [1899] W. N. 27; *Re Woods*, [1904] 2 Ch. 4; *Re Chaytor*, [1905] 1 Ch. 233; *Re Owen*, [1912] 1 Ch. 519; *Re Beech*, [1920] 1 Ch. 40.

In the case of an absolute gift with an executory limitation over, the rule is in general not applicable: *Re Bland*, [1899] 2 Ch. 336.

The provision in the text as to the income of unsold investments coupled with the power to postpone conversion is effectual to exclude the rule and entitles the tenant for life, pending conversion, to the actual income and no more: *Rowlls v. Bebb*, [1900] 2 Ch. at p. 114; *Re Chancellor*, 26 Ch. D. 42; *Re Crowther*, [1895] 2 Ch. 56; *Re Charteris*, [1917] 2 Ch. 379, 392; but a power to postpone accompanying a trust for conversion is not alone sufficient to do so: *Re Chaytor*, [1905] 1 Ch. 233. The question is one of construction as to the purpose of the power to postpone: see *Re Inman*, [1915] 1 Ch. 187, 191; *Re Aste*, 118, L. T. 433; and cf. *Re Rogers*, [1915] 2 Ch. 437. The actual income, however, may be expressly given, as in *Re Thomas*, [1891] 3 Ch. 482, and in *Re Godfree*, [1914] 2 Ch. 110.

Where, however, there is no trust for conversion the tenant for life is entitled to the income of unauthorised and wasting investments retained under a power: *Re Sheldon*, 39 Ch. D. 50; *Re Bates*, [1907] 1 Ch. 22; *Re Wilson*, *ib.* 394; *Re Nicholson*, [1909] 2 Ch. 111.

As to apportionment between capital and income of reversionary property retained under a power and falling in after the testator's death, in the absence of a direction such as is contained in the form in the text, see *Re Chesterfield*, 24 Ch. D. 643; *Re Morley*, [1895] 2 Ch. 738; cf. *Re Hubbuck*, [1896] 1 Ch. 754; *Re Lewis*, [1907] 2 Ch. 296; as to apportionment where purchase-money is paid by instalments, see *Re Hollebhone*, [1919] 2 Ch. 93. In applying the rule interest is now allowed at 4 p.c.: *Re Baker*, [1924] 2 Ch. 271.

In the case of real estate devised on trust for sale, the tenant for life is entitled to the rents and profits until sale: L. P. Act, 1925, s. 28 (2), unless the will directs the contrary; and owing to land being defined as including land of any tenure (s. 205 (1) (ix)), the tenant for life of leaseholds so bequeathed is entitled to the whole nett rents as profits, thus reversing the rule in *Howe v. Lord Dartmouth*; *Re Brooke*, 70 Sol. J. 526. See also *Re Searle*, [1900] 2 Ch. 829; *Re Earl of Darnley*, [1907] 1 Ch. 159. Provided the sale were not improperly postponed it made no difference that the real estate was included in a residuary devise and bequest of real and personal estate as a mixed fund: *Re Oliver*, [1908] 2 Ch. 74. It may sometimes be desirable to direct the trustees to provide a depreciation fund or to take out a sinking fund policy. As to mining rents, see L. P. Act, 1925, s. 28 (2), and S. L. Act, 1925, s. 47.

As to the mode of distribution of income where advances are

2. IF LEASEHDS held for any term not exceedg — yrs from my death shl form pt of my este, my trees shl retain & set apart as a deprecion fund durg a period of — yrs from my death or until all such leasehds shl have run out or been sold (if the same shl happen bfe the expiron of such — yrs) one — pt of the gross rents & profits arisg from such respective leasehds (includg an apportioned pt of any rents accrug due at the end of such — yrs or any earlier time when the same shl be sold) with power to determine conclusively the precise amt to be so retained, & shl durg such period of — yrs or until all such leasehds shl have run out or been sold as afsd, accumulate such fund by investg the same & the resultg income throf in or upon any of the investmts hby authorised with power to vary the same from time to time at discron. AND shl from & after the expiron of such period of retainer & accumulon stand possed of such accumulated fund & the income throf Upon the trusts hrinar declared concerng the proceeds of sale & conversion of my residuary este & the income throf, & so as thenceforth to be added to & form pt of the same for all pposes.

Provision
for re-
serving
part of
rents of
lease-
holds as
deprecia-
tion fund
(a).

3. MY TREES shl out of the moys to arise from the sale (b) call-
ing in & conversion of or forming pt of my sd [real &] psonal
ppty, pay my funl & testy expses (c) (including all este duty

Trusts of
proceeds
of sale
and con-
version

directed to be brought into hotchpot, see *Re Rees*, 17 Ch. D. 701; *Re Poyser*, [1908] 1 Ch. 828; *Re Hargreaves*, 88 L. T. 100; *Re Hart*, 107 L. T. 757; *Re Craven*, [1914] 1 Ch. 358; *Re Forster-Brown*, [1914] 2 Ch. 584, 594; *Re Cooke*, [1916] 1 Ch. 480; *Re Tod*, [1916] 1 Ch. 567; and see *post*, p. 808, note (e).

(a) A direction in a will to apply a yearly sum during a term exceeding twenty-one years in effecting a leasehold depreciation policy is not void as infringing the Accumulations Act, 1800, re-enacted in s. 164 of the L. P. Act, 1925: *Re Gardiner*, [1901] 1 Ch. 697. As to sinking fund policies, see *ante*, p. 736, f. 13.

(b) See *Re Livingstone*, 61 Sol. J. 384.

(c) By s. 16 (1) and (6) of the L. P. Act, 1925, personal representatives are now made accountable for all death duties (defined in s. 205 (1) (iv), as meaning estate duty succession duty legacy, and every other duty leviable or payable on a death) in respect of land, including settled land, which devolves upon them by virtue of any statute or otherwise to the extent of the assets including land vested in them. It is, however, expressly provided by s. 16 (5) of the above Act that the incidence of the duties is not to be affected, and it would therefore appear that the effect of the section has not been to enlarge the meaning of the expression "testamentary

Testa-
mentary
expenses.

for pay-
ment of
debts, &c.

leviable at my death (*d*) in respect of my residuary este) & debts (*e*) and the legacies given by this my will or any codl hto and all death duties (*f*) & other moys which under or by virtue of any direction or bequest free of duty contained in this my will or any codl hto are payable out of my genl personal

expenses." A direction to pay testamentary expenses does not include estate duty on real estate (*Re Sharman*, [1901] 2 Ch. 280; *Berry v. Gankroger*, [1903] 2 Ch. 116; *Re Spencer Cooper*, [1908] 1 Ch. 130; but see *Re Palmer*, 106 L. T. 319) nor estate duty on a *donatio mortis causa* (*Re Hudson*, [1911] 1 Ch. 206) nor estate duty on property over which the testator has a general power of appointment whether exercised or not (*Porte v. Williams*, [1911] 1 Ch. 188; *O'Grady v. Wilmot*, [1916] 2 A. C. 231) but includes estate duty on all personalty belonging to the testator (*Re Clemow*, [1910] 2 Ch. 182) and therefore, if the general personal estate is insufficient, duty on specifically bequeathed chattels must be raised out of undisposed of real estate: *Re Pullen*, [1910] 1 Ch. 564. It also includes the costs of an action to administer personal estate (*Sharp v. Lush*, 10 Ch. D. 468; see *Re Townend*, [1914] W. N. 145) but not the costs of an administration action so far as increased by the administration of real estate (*Re Jones*, [1902] 1 Ch. 92; *Re Betts*, [1907] 2 Ch. 149; *Patching v. Barnett*, *ib.* 154, n.) nor the costs of a probate action (*Re Prince*, [1898] 2 Ch. 225). And see, further, as to what is included: *Sharp v. Lush*, *sup.*; Jarman, 6th ed., 2014 *et seq.*, and *ante*, p. 725, note (*a*).

(*d*) See *Re Kennedy*, [1917] 1 Ch. 9; Cf. *Re Tanqueray*, [1924] W. N. 142.

Foreign
duties.

(*e*) A direction to pay debts has been held not to include local death duty on specifically bequeathed property in Australia: *Re Brewster*, [1908] 2 Ch. 365; nor on specifically bequeathed property in France: *Re De Sommery*, [1912] 2 Ch. 622. A direction to pay legacy duty does not include French mutation duty; *Re Scott*, [1915] 1 Ch. 592; cf. *Re Grosvenor*, [1916] 2 Ch. 375.

Direc-
tions
as to pay-
ment of
duties.

(*f*) It is here assumed that proper provisions relieving the respective beneficiaries from payment of duty where that is intended have been inserted in the earlier part of the will. See, as regards real estate devised, *ante*, p. 744, f. 25; as regards leaseholds specifically bequeathed, *ante*, p. 748, f. 8; and as regards pecuniary and specific legacies the words "free of duty" or similar expressions contained in the various forms of legacy, and the general form, *ante*, p. 768, f. 37. Where the incidence of duty has not been dealt with in the earlier part of the will otherwise than in connection with legacies, say, after the discretion to pay legacies, "& the duty on all legacies or annuities by this my will or any codl hto bequeathed free of duty": adding, if desired, "& all este [& succession] duty leviable at my death in respect of my real & personal este [or the dispositions throf hrinbfe contained"]]. But the better and more convenient course, at any rate where the testator differentiates between the dispositions made by him as regards payment of duty, is to adopt the form in the text in conjunction with appropriate directions to be inserted in the earlier part of the will.

este [and make provision for the paymt of any annuities hby or by any codl hto bequeathed by me (g)].

4. MY TREES shl [but during the life, or, "widowhood," of my wife not without her consent] at their discreon invest the residue of the sd moys in the names (h) of my trees in or upon any of the investmts hby authorised with power [with such consent as afsd during the life, or, "widowhood," of my wife] to vary or transpose such investmts for or into others of a nature hby authorised (i).

Trust for invest-ment of residue.

5. MY TREES shl invest the legacy, or, "share of my residuary este [of the trust fund]" hrinbfe given to or in trust for the sd — [with his consent [in writing] during his life if of full age] in the names, &c., as in last form, [saying "with such consent durg the life after attaing majority of the sd —"]].

Trust for invest-ment of legacy or share given to an infant or settled (k).

6. DURG THE lifetime of my wife no sale or investmt or transposon of investmt of any pt of the trust fund in weh she shl for the time being be interested, shl be made witht her consent in writg, & after her death, no sale or investmt or transposon of investmt of any pt of the trust fund weh shl have been appropriated in or towards satisfon of or as pt of the share of any of my sd daurs in the trust fund shl be made witht the consent in writg of such daur, if livg & of full age.

Consent to invest-ments where daugh-ters' shares settled.

LIFE INTERESTS (a).

1. MY TREES shl pay the income (b) of the residue of the sd moys (weh moys & the ppty for the time being representg the same are hrinar called the trust fund) [of the sd sum of £—; or, "the sd share" & the ppty for the time being representg

Life interest in residue.

(g) See *ante*, p. 773, note (a).

(h) See *ante*, p. 513, note (f).

(i) Power to trustees to invest and vary "as they may think fit" does not enable them to make investments not authorised by law: *Re Hazeldine*, [1918] 2 Ch. 433.

(k) For a form providing also for maintenance, see *ante*, p. 762.

(a) The forms under this and the next four headings are adapted to gifts of residue only. For limitations in strict settlement, see *post*, pp. 837 *et seq.*

(b) As to apportionment of dividends, see *Re Muirhead*, [1916] 2 Ch. 181.

the same (hrinar called A.'s legacy, or, "share" (c))] to the sd A. [to my wife] during his [her] life [so long as she shl remain my widow (d)] [& so that during coverture the same shl be witht power of anticipon].

Life interest to wife reducible on re-marriage.

2. MY TREES shl pay the income of the trust fund to my wife durg her life so long as she shl remain my widow, & in the event of her marrying again shl pay the income of [one moiety] of the trust fund to her durg the remr of her life witht power of anticipon (e).

Life interest in remainder (f).

3. AFTER THE death of the sd — [the death or re-marriage of my wife, or as the case may be] my trees shl pay the income (g) of the trust fund to —, if survivg, durg his [her] life [& so that during coverture the same shl be witht power of anticipon].

Life interest determinable on bankruptcy, &c. (h).

4. (i.) IF AT my death, no act or event shl have been done or happened [other than a consent to any exercise of the power of advancemt applicable hrtto] whereby the life intt

(c) In subsequent clauses it will be necessary to substitute this phrase for "the trust fund."

(d) As to the validity of gifts during widowhood, and generally as to gifts operating in restraint of marriage, see Elph. Introd., 7th ed., 576; Jarman, 6th ed., 1525 *et seq.*

Gifts in restraint of marriage. Other causes of forfeiture.

A clause of forfeiture on change of religion or on marriage with a person of different religion, is valid: *Hodgson v. Halford*, 11 Ch. D. 959; *Re Knox*, 23 L. R. Ir. 543; *Wainwright v. Miller*, [1897] 2 Ch. 255. A gift of income to a married woman so long as she should live apart from her husband was held void in *Re Moore*, 39 Ch. D. 116, where the distinction between gifts on condition and gifts by way of limitation is discussed; cf. *Re Charleton*, 55 Sol. J. 330. But a gift to provide, during the period of separation, for a wife already living apart may be good: *Re Lovell*, [1920] 1 Ch. 122.

(e) The trust on re-marriage should be for payment of the income of a moiety of the fund, not of a moiety of the income of the whole fund, which might interfere with the distribution of the moiety of the capital among the children on the re-marriage: see *Macculloch v. Anderson*, [1904] A. C. 55; and cf. *Re Faux*, 59 Sol. J. 457.

(f) As to the effect of divorce on a trust for a husband or wife in remainder, see *Bullmore v. Wynter*, 22 Ch. D. 619; *Re Morrisson*, 40 Ch. D. 30; *Duchess of Marlborough v. Duke of Marlborough*, [1901] 1 Ch. 165. *Re Pilkington's Settlement*, (1923), 129 L. T. 629.

(g) See note (b) on last page.

(h) Section 33 of the T. Act, 1925, does not apply to a case where the beneficiary has before the commencement of his interest suffered or done an act which if suffered or done after the interest had commenced would work a forfeiture. Such a position is not likely to occur in the case of a settlement, but might do so if some time elapsed between the date of a will and the death of the testator. As to trusts of this nature, see *ante*, p. 517, note. Compare the forms in the case of annuities, *ante*, pp. 776, 777.

hby given to the sd A. in the trust fund (i), or some pt throf wd if belongg to him absolutely have become vested in or charged in favour of some other pson (k), then my trees shl pay the income of the trust fund to the sd A. durg his life upon protective trusts (a).

The condition though phrased in words of futurity would apply to past events: *Trappes v. Meredith*, L. R. 7 Ch. 248; *Re Evans*, [1920] 2 Ch. 304. As to the application of the rule against perpetuities in the case of a discretionary trust by will, see *Re Blew*, [1906] 1 Ch. 624; *Re De Sommersy*, [1912] 2 Ch. 622; *Kennedy v. Kennedy*, [1914] A. C. 215.

(i) For the variations for a mixed fund of realty and personalty, see last page, note (b), and make corresponding alterations throughout the form; and for the variations for a legacy or share of residue, see f. 1, *supra*.

(k) Person includes a corporation, and the singular includes the plural: L. P. Act, 1925, s. 61.

(a) See, as to the discretionary trusts after forfeiture in favour of the principal beneficiary, his or her wife or husband and children or remoter issue, under s. 33 (1) (ii) (a) of the T. Act, 1925, *ante*, p. 519. The section confers no power on the trustees to accumulate the income after forfeiture and subject to the discretionary trusts in favour of the family of the principal beneficiary a forfeiture accelerates the interests in remainder after the protected life interest. If it is desired to exclude the provisions of the section the following clause should be added in place of a declaration of protective trusts: see, as to trusts of this nature, *Re Coleman*, 39 Ch. D. 443, and the cases cited in the argument. In that case continue:—

Trust after forfeiture to pay to life tenant or to accumulate.

“Durg such period or periods as the sd A. shl not be entitled to receive the income of the trust fund my trees shl in their diseron either pay the sd income to or apply the same for the psonal support or benefit of the sd A. in such mnner as they think fit, or may at any time or times in the like diseron withhold all or any pt of such income from him & accumulate the same as an addition to the capl of the trust fund, by the investmt throf in any investmts hby authorised, with power to vary the same from time to time at diseron, & so that such accumulons & the income throf shl be held upon the trusts hby declared concerng the origl fund, but so that my trees shl nevertheless have power in their diseron to pay or apply such accumulons or any pt throf at any time afterwards durg the life of the sd A. to him or for his benefit as if the same had been income of the then current yr:

(ii.) If the sd A. shl survive me for more than twenty-one yrs the accumulon of any income wch may be withheld from him under the discretionary power conferred by law upon my trees shl after the expiron of such twenty-one yrs cease, & the

(ii.)-(v.) *Provision for cesser of forfeiture; events in which forfeiture is not to take place; power to A. to charge income in favour of children, as at p. 520, f. 10, mutatis mutandis, saying "failed or," &c., & tree's indemnity, as at p. 519, f. 8 (ii).*

Trust of income after forfeiture where life interest not protected (b).

Provision determining all tenancies for life on bankruptcy, &c.

5. AFTER THE failure or determinon durg the life of the sd A. of the trust hrinbfe declared of the sd income in his favour my trees shl durg the remr of his life hold the sd income Upon the trusts & for the pposes upon & for wch the same wd for the time being be held if he were then dead.

6. (i.) IF ANY pson to whom a life intt in the trust fund is hrinbfe given shl at any time alienate or charge, or affect to alienate or charge, the income of the trust fund or any pt throf, or if by reason of any act or event, or, "any act or his [or her] bkptey or any other event," done or happeng whether bfe or after such life intt shl come into posson or bfe or after my death [not being merely a consent to the exercise of any power of advancemt applicable hrto], the sd income or any pt throf shl or but for this provon wd become vested in or charged in favour of some other pson or psons (c), then the trust hrinbfe contd of the sd income in favour of such pson shl immedly thrupon fail or determine, as the case may be.

(ii.)-(v.) *Provision for cesser of forfeiture; events in wch forfeiture is not to take place; power to charge income in favour of children, as at p. 520, f. 10, mutatis mutandis, saying "failed or," &c., & "such pson," instead of "the husbd," & trees indemnity, as at p. 519, f. 8 (ii).*

(vi.) *If the life interests are not to be protected, continue as in f. 5, mutatis mutandis. If they are to be protected, say, "Durg*

income so withheld shl be thenceforth pd or applied by my trees in the same mner as if the sd A. were dead :

[(iii.) It is my earnest wish & request that my trees shl in the exercise of the discron conferred by law upon them act accordg to what they may consider the best interests of the sd A., & not withhold the sd income from him unless they see good reason, but this expression of my wishes is intended merely for their guidance & not as imposg any legal obligon or fetter on their discron]."

(b) As to this form, see *ante*, p. 521, note (a).

(c) See *ante*, p. 793, note (k).

the parts (if any) of the life of such pson durg which such pson shl not be entitled to receive the income of the trust fund or any part throf, my trees shl hold the income hrinbfe given to such pson upon protective trusts for such pson durg his life," or as the case may be.

7. MY TREES shl pay the income of the trust fund to my wife durg her life, & so that durg any future coverture the same shl be witht power of anticipon, but subjt to & charged with the obligon of maintaing & educatg thereout such of my chln as shl for the time being be under the age of twenty-one yrs & unmarried [& maintaing such of my daurs as shl for the time being be over that age & spinsters], but witht liability to account so long as she shl maintain & educate them resply to the satisfon of my trees.

Life interest to widow charged with maintenance of children (e).

8. I REQUEST my wife, but not so as to impose any legal obligon upon her, to maintain & educate such of my chln as shl for the time being be under the age of twenty-one yrs & unmarried, & to make pper annual or other allowcees to such of my chln as shl for the time being have attained the age of twenty-one yrs or married under that age & shl in her opinion require the same.

Request to maintain children, imposing no obligation.

9. MY TREES shl pay the income of the trust fund to —, —, & — & the survors of them durg their respective lives in eql shares as tenants in common, & subjt thereto, shl stand possed of the trust fund in trust for the last survor of them the sd —, —, & — absolutely.

Tenancy in common to several for life, with trust of capital for last survivor (f).

10. MY TREES shl after the death of my sd wife out of the income of the trust fund accruing durg the lifetime of — pay an anny of £—— to him durg his life & shl out of the income of the trust fund accruing durg the lifetime of — pay an anny of £—— to her durg her life such respective annies to

Annuity out of income of

(e) The full form (*ante*, p. 521, f. 13) can readily be adapted to a will. As to the construction of the clause if not restricted to infant children, see *Re Booth*, [1894] 2 Ch. 282. Such a legacy does not carry interest from the testator's death: *Re Crane*, [1908] 1 Ch. 379, unless it is so expressed as that the widow is not the primary object of the testator's bounty: *Re Ramsay*, [1917] 2 Ch. 64. Maintenance in an immoral home is a breach of this trust: *Re G.*, [1899] 1 Ch. 719.

(f) If this provision were contained in an appointment made under a special power in the testator's marriage settlement in the usual form, it would be void for remoteness: *Whitby v. Von Luedecke*, [1906] 1 Ch. 783; *Re Samuda's Settlement Trusts*, [1924] 1 Ch. 61.

residue
(g).

commence from the death of my sd wife & to be payable by eql half-yrly or "qrtly" paymts & the first paymt throf to be made at the expiron of six or "three" calr months from her death [for a female add, & so that the anny of the sd — shl durg coverture be for her separate use witht power of anticipon].

GENERAL POWERS OF APPOINTMENT.

General
power of
appoint-
ment to
one.

1. MY TREES shl stand possessed of the trust fund & of the income throf IN TRUST for such pson or psons, for such pposes, & in such mner as the sd, *donee*, shl from time to time [by any deed or deeds, revocable or irrevocable, or] by will or codl appt; AND IN DEFAULT of & subjt to any such apptmt, IN TRUST, &c.

The same
to two
and the
survivor.

2. MY TREES, &c., as above, as the sd, *donees*, shl from time to time by any deed or deeds, revocable or irrevocable, jointly appt, And in default of & subjt to any such apptmt, then as the survor of them the sd, *donees*, shl, after the death of the other of them, from time to time in like mner or by will or codl appt; AND IN DEFAULT of & subjt to any apptmt under the respective powers hrinbfe contd, IN TRUST, &c.

TRUSTS FOR CHILDREN AND ISSUE.

Trust for
testator's
children
or re-
moter
issue as
widow

1. [AFTER THE death of my wife] (a) my trees shl stand possed of the capital & future income of the trust fund IN TRUST for all or such one or more exclusively of the others or other of my chln or remoter issue at such age or time, or respective

(g) Where the annuitant is an infant the vested annuity is treated as property for the purpose of enabling the trustees to apply it for maintenance and any accumulations of surplus belong to the annuitant or his estate: T. Act, 1925, s. 31 (4).

(a) If the widow's life interest is reducible on remarriage, say, "Subjt to the life intt of my wife in the trust fund or in a moiety throf" or as the case may be, "in the event of her remarre as afsd."

ages or times, if more than one in such shares, & with such trusts for their respective benefit & such provisos for their respective advancement (either during the life of my wife or after her death) & maintnee & educon at the discreon of my trees or any other pson or psons (c), as my wife shl from time to time by any deed or deeds. revocable or irrevocable or by will or codl witht transgressg the rule agst perpetuities appt (d), AND IN DEFAULT of & subjt to any such apptmt as afsd, &c.

2. [AFTER THE death of the sd —] my trees shl, &c., as in f. 1, IN TRUST for all or such one or more exclusively of the others or other, of the chln or remoter issue of the sd — [by the sd —], at such age or time, or respective ages or times, if more than one in such shares, & with such trusts for their respective benefit & such provisos for their respective advancement either after the death of the sd — or during his life with his consent [after the death of the sd — & — or during their, his or her life with their, his or her consent] & mtce & educon at the discreon of my trees or any other pson or psons, as the sd — shl by

shall appoint (b).
Trust for children or issue of tenant for life as he shall appoint.
Variations where the power is given to two tenants for life and the survivor (f).

(b) As to the frame of the power of appointment, see *ante*, p. 522, notes. For a power excluding a child taking an estate, see *post*, p. 805, f. 21.

(c) Without such words as these, to give a discretion to another person when exercising the power would be invalid, as amounting to a delegation of the power: *Re Baldock*, 48 Sol. J. 492; *Re Greenslade*, [1915] 1 Ch. 155. See also *Re May's Settlement*, [1926] Ch. 136.

(d) If the widow's life interest is determinable on her marrying again, add if so intended, "PROVD that if my wife shl marry again, the power lastly hrinbfe contd shl thenceforth cease to be exercisable, but witht prejudice to any previous exercise throf by deed." There might be a question as to the effect of this where there has been a previous revocable appointment.

Proviso where wife's life interest is determinable on her marrying again.

If in the same event the power of appointment is to continue, the following proviso may be added if desired: "PROVD that if my wife shl marry again the power lastly hrinbfe contd shl not be exercised by her after such marre so as to diminish the share to wch any child of mine shl at the date of such apptmt have become entitled in posson in default of apptmt." Cf. *ante*, p. 530, f. 23.

(f) For additions to this power where the interest of the tenant for life is determinable on bankruptcy, &c., see *ante*, p. 530.

any deed or deeds revocable or irrevocable or by will or codl witht transgressg the rule agst perpetuities appt, AND IN DEFAULT of & subjt to any such apptmt, &c. [or, "as the sd — & — shl by any deed or deeds revocable or irrevocable jointly appt, AND IN DEFAULT of & subjt to any such apptmt as the survivor (a) of them the sd — & — shl in like mner or by will or codl appt, AND IN DEFAULT of & subjt to any apptmt under the respective powers lastly hrinbfe contd, &c."].

A short form (b).

3. [AFTER, &c.] my trees shl, &c., as in ff. 1 or 2, IN TRUST for my issue, [the issue of the sd —,] in such shares & in such mner as my wife [as the sd —] shl by deed or will appt, AND IN DEFAULT of & subjt to any apptmt, &c.

Trust for children of testator or another at 21, &c. (c).

4. [Commencemt as in ff. 1 or 2], IN TRUST for all or any my chln or child [the chln or child of the sd —,] who being male attain (d) the age of twenty-one yrs, or being female attain that age or marry (e), if more than one in eql shares.

Trust for own children at 21, or marriage with consent (f).

5. [Commencemt as in f. 1, p. 796.] IN TRUST for all or any my chln or child, who being male attain the age of twenty-one yrs, or being female attain that age or marry with the consent,

(a) Where the power is given to A. and his wife, the survivor is ascertained on the death of either without regard to a future marriage: *Re Miller* (1923), 129 L. T. 666.

(b) See note (a) on last page. Under this form no discretionary powers can be given in the appointment: *Re Greenslade*, [1915] 1 Ch. 155.

(c) This form should not be used where the parent is living and does not take a life interest; see f. 8 below for that case. In the case of the testator's children, or those of another *deceased* person, the vesting may be postponed till any later age than twenty-one. For a trust for the children of another *living* person postponing the vesting to a later age, as far as the law will permit, see *post*, p. 800, f. 10.

(d) This wording is suitable whether the children are all under age or unmarried, or some are already of age or married; but in the latter case, if thought preferable, say, "have attained or shl attain, &c.," and "have married or shl marry." The gift is clearly contingent whatever the form of the gift over: *Re Edwards*, [1906] 1 Ch. 570.

(e) If desired add "& who shl not in the lifetime of my wife [the sd —] have alienated or charged or affected to alienate or charge his or her expectant or vested intt under this trust."

Marriage with consent.

(f) Under a trust in this form a daughter, although marrying without consent, would, if she afterwards attains twenty-one, become entitled. If it is the intention that a daughter so marrying should be absolutely excluded, the next form should be used. As to what amounts to consent, see *Re*

if marrying after my death, of her or their guardian or guardians, if more than one in eql shares.

6. [*Commencement as in f. 1, p. 796.*] IN TRUST for all or any my chln or child who being male attain the age of twenty-one yrs, or being female attain that age or marry in my lifetime or attain that age after my death witht havg previously married or marry after my death under that age with the consent of her or their guardian or guardians, if more than one in eql shares.

Trust for own children excluding daughters marrying under age without consent.

7. [*Commencement as in f. 1, p. 796, or 2, p. 797.*] IN TRUST for all or any my chln or chld, [the chln or child of the sd —] if more than one in eql shares.

Trust for children to vest at once (g).

8. MY TREES shl, &c., as in f. 1, p. 796. IN TRUST for all or any the chln or child of —, who shl be livg at my death or born at any time afterwards bfe any one of such chln for the time being in existence attains a vested intt (h), & who being

Trust for children of living person who takes no life interest.

Smith, 44 Ch. D. 654. Consent may not be unreasonably withheld: *Re Brown*, [1904] 1 Ch. 120. A daughter marrying with the consent of the Court under s. 9 of the Guardianship of Infants Act, 1925, would not fulfill the condition.

(g) This form is adapted to the case where the children are all adult, otherwise form 4 should be used. An immediate trust in this form for the children of another living person would include only those living at the testator's death, provided there were any such children then in existence; but if the gift is in remainder, children born after the testator's death and before the period of distribution, would share: see *Elph. Introd.*, 7th ed., 583.

(h) In the case of a trust of a capital fund for the children who attain twenty-one, &c., the parent being living, but taking no life interest, the period for ascertaining the class is, by a rule of convenience to prevent the distribution being kept in suspense, the time when the first of the class by attaining a vested interest becomes entitled to payment, and children coming into *esse* after that time are excluded: *Andrews v. Partington*, 3 Bro. C. C. 401; *Elph. Introd.*, 7th ed., 582, 583; see also *Re Canney*, 54 Sol. J. 214; *Re Deloitte*, [1919] 1 Ch. 209; *Re Faux*, 84 L. J. Ch. 873; *Re Paul's Settlement*, [1920] 1 Ch. 99, 107; but it is better to express this (if so intended) as in the text. Where there is a trust for accumulation the children born during the continuance of that trust and attaining twenty-one, &c., will be entitled: *Watson v. Young*, 28 Ch. D. 436; but the rule does not apply to a gift of income only: *Re Wenmoth*, 37 Ch. D. 266, and see *Re Bedson*, 28 Ch. D. 523.

Trust for children where parent takes no life interest.

The trust in the text might be extended to all children born before the youngest child for the time being *in esse* attains a vested interest, but this would prevent a child who has attained a vested interest from receiving his share until all the younger children have attained vested interests or the death of the parent.

A contingent residuary devise with or without the intervention of trustees

male attain the age of twenty-one yrs, or being female attain that age or marry, if more than one in eql shares.

Trust for children of tenant for life at 21, &c., effected by means of survivorship and accruer clause (a).

9. [*Commencement as in f. 2, p. 797.*] IN TRUST, if there shl be but one child of the sd —, for such one child : AND if there shl be two or more chln of the sd —, then IN TRUST for such two or more chln in eql shares : PROV'D ALWAYS, that if there shl be more than one child of the sd —, & any of them being male shl die under the age of twenty-one yrs, or being female shl die under that age & witht havg been married, then as well the origl share of the child so dying as any share or shares wch shl have accrued to him or her by virtue of this psnt provon, [or so much throf as shl not have been applied or disposed of for the advancemt of such child under the power for that ppose applicable hrto,] shl from time to time accrue to the others or other of such chln, & (so far as circes will admit) shl vest in them, him, or her, if more than one in eql shares, at such & the same time or times & in such & the same mner as is hribfe provd concerng their, his, or her origl shares or share ; PROV'D that if there shl be no child of the sd —, or if there shl be one or more such child or chln, but such child or all such chln shl being male die under the age of twenty-one yrs, or being female die under that age & witht havg been married, then my trees shl hold the trust fund, or so much throf as shl not have been applied or disposed of for the advancemt of any such child or chln under the afsd power, IN TRUST, &c.

Trust for children of living person, postponing the vesting to 25.

10. [*Commencement as in f. 2, p. 797.*] IN TRUST for all or any the chln or child of the sd — who shl be living at my death or born at any time afterwards, & who being male attain the age of twenty-five yrs bfe the expiron of twenty-one yrs from the death of the survor of me & the sd —, or being female attain the age of twenty-five yrs or marry bfe the expiron of such

now carries the intermediate income unless otherwise disposed of by the will : L. P. Act, 1925, s. 175. Contingent residuary bequests of personalty or of a mixed fund of realty and personalty always have carried the intermediate income : *Countess Bective v. Hodgson*, 10 H. L. C. 656. As to the circumstances under which contingent general legacies carry interest, see *ante*, p. 760, note (c).

(a) This form of trust, which was formerly common, is now seldom used, being superseded in practice by f. 4, *ante*, p. 798, but it may occasionally be found useful.

twenty-one yrs, [or who shl be living at the expiron of such twenty-one yrs (b)], if more than one in eql shares (c).

11. IF ANY grandson of mine shl or wd if livg attain the age of twenty-five yrs bfe the expiron of twenty-one yrs from the death of the last survor of my chln & remoter issue (if any) livg at my death, then the vestg of the share of each such grandson in the trust fund shl be postponed until the attainmt by such grandson of the age of twenty-five yrs.

12. [Commencemt as in f. 1, p. 796, or 2, p. 797.] IN TRUST for all or any my chln or child who shl be livg at my death & being male attain the age of twenty-one yrs or die under that age leavg issue or being female attain that age or marry, & any

Clause postponing vesting of grandsons' shares to 25, if not too remote (d).

Trust for children of testator at 21, &c., including

(b) As this gift is extended to children born after the testator's death, it is restricted so as to keep within the rule against perpetuities. In the absence of such an express restriction, the rule used to be that where the share of each person was ascertained, the gifts to those who happened to be within the limits of the rule against perpetuities might be good as to them (regard being had to the actual state of the family at the testator's death), though the gifts were invalid as to the others who were beyond that limit, because the number and amount of the shares were ascertained at the proper period and within the proper limit of time: *Wilkinson v. Duncan*, 30 Beav. 111; *Von Brockdorff v. Malcolm*, 30 Ch. D. 172; and see *Re Thompson*, [1906] 2 Ch. 199; *Re Paul*, [1921] 2 Ch. 1; but that where the vice of remoteness might possibly (according to the state of facts existing at the testator's death) affect an unascertained number of members of the class, so as to affect the class as a whole, it invalidated the whole gift: *Pearks v. Moseley*, 5 App. Cas. 714; *Re Mervin*, [1891] 3 Ch. 197; *Re Hume*, [1912] 1 Ch. 693.

Rule against perpetuities.

The rule above-mentioned has been considerably modified by s. 163 of the L. P. Act, 1925, which provides that, where a gift fails for remoteness by reason of vesting being made to depend upon the attainment by a beneficiary or class of beneficiaries of an age exceeding twenty-one years, such gift takes effect as if twenty-one years were substituted for the age mentioned in the instrument creating the gift.

(c) If the parent does not take a life interest this trust may be restricted, as in form 8, to children born before any child (or if preferred before the youngest child for the time being *in esse*) attains a vested interest.

(d) See last note. Another method would be to describe the class of grandchildren in clause 11 as follows:—"who being such attain the qualifying age hrinar mentd or being female attain that age or marry," adding "The qualifying age hrinbefe referred to shl be the age of twenty-one yrs except in the case of any grandchild who shl or would if livg attain the age of twenty-five yrs before the expiron of twenty-one yrs from my death & in the excepted case shl be the age of twenty-five yrs."



those
dying in
his life-
time
leaving
issue (a).

child or chln of mine who may have died (b) in my lifetime (whether bfe or after the date of this my will) leavg issue livg at my death (c), if more than one in eql shares, & so that the share hby expressed to be given to any such deced child as afsd shl vest in his or her repves as pt of his or her psonal este in the same mner as if he or she had survived me & died immedly after me havg attained a vested intt.

The same
for chil-
dren of
another
person (d).

13. [Commencement as in f. 2, p. 797.] IN TRUST for all or any the chln or child of the sd.— who shl be livg at my death or born afterwards, & being male attain the age of twenty-one yrs or die under that age leavg issue, or being female attain that age or marry, & any child or chln of the sd — who may have died in my lifetime, &c., as in last form.

Mode of
providing
for a child
prede-
ceasing
the testa-
tor
leaving
issue.

(a) This form operates according to the Wills Act, 1837, s. 33, in making the share of a child dying before the testator leaving issue part of his or her estate. Without this express provision such a child would be excluded, as the section is prevented from applying to gifts to a class by the rule of construction that such a gift includes only those members of the class who survive the testator: *Ive v. King*, 16 Beav. at p. 53; *Re Hannam*, [1897] 2 Ch. 39, even though the class should in fact consist of but one individual: *Re Harvey*, [1893] 1 Ch. 567. The words declaratory of the intention that the share of a deceased child shall go to his or her representatives should be inserted though they appear to be unnecessary having regard to the Wills Act, 1837, s. 33. The vesting in this case may of course be postponed to any age later than twenty-one: see *ante*, p. 798, note (c); but it may be proper that such restriction should not apply to deceased children. As the effect of the clause in the text is to make the share of a deceased child part of his estate so as to be subject to his debts (see p. 759, note (b)), and so as possibly in the case of a daughter to carry her share to her husband, it may be better to provide for this case by giving the share of a deceased child to the issue as in f. 18, *post*, p. 803. It is also generally better and more convenient to provide for the event of a child predeceasing the testator leaving issue, by a separate clause, as in f. 15, p. 803, and f. 20, p. 805; see *ante*, p. 738, note (a).

Words of
futurity.

(b) As to the danger of using words of futurity instead of the words "may have died" or "shall have died" in this and similar clauses, see *Gorringe v. Mahlstedt*, [1907] A. C. 225; *Re Cope*, [1908] 2 Ch. 1; see also *Re Lambert*, [1908] 2 Ch. 117; *Re Metcalfe*, [1909] 1 Ch. 424; *Re Brown*, [1917] 2 Ch. 232; cases in which there was no context, as in *Re Williams*, [1914] 2 Ch. 61, to assist the strictly grammatical meaning of the words "shall die" as words of futurity.

(c) See *ante*, p. 798, note (c).

(d) This form is not to be used where the parent is living but does not take a life interest. In that case the form should be modified as at p. 799, f. 8.

14. [*Commencement as in f. 2, p. 797.*] IN TRUST for all or any the chln or child of the sd — who shl be livg at my death or born at any time afterwards, & who shl be livg at the expiron of twenty-one yrs from the death of the survor of me & the sd —, or shl within such twenty-one yrs attain the age of twenty-five yrs (f) or die under that age leavg issue, & any child or chln of the sd — who may have died, &c., as in f. 12.

15. IF ANY child of mine [of the sd —] shl have died (g) in my lifetime (whether bfe or after the date of this my will), leavg issue livg at my death, the share in the trust fund wch such child wd have taken if he or she had survived me [& attained a vested intt] shl be held In trust for his or her psonal repves, as pt of his or her psonal este.

16. IF THE sd A. shl die in my lifetime (whether leavg issue or not) my residuary real & psonal este shl vest in his psonal repves, or devisees resp'y, accordg to the nature of the ppty, as pt of his real & psonal este resp'y, in the same mner as if he had survived me & died immedly after me.

17. THE TRUSTS hrinbfe declared of the trust fund shl take effect as if my son — (who went to, &c., & has not been heard of for — yrs) had died in my lifetime witht leaving issue livg at my death unless & until such son or his repves or "issue" shl within five yrs from my death claim the share intended for such son or his repves & satisfy my trees as to his or their identity & right to such share.

18. [*Commencement as in f. 1, p. 796, or 2, p. 797.*] IN TRUST for all or any my chln or child [the chln or child of —] livg at my death, & the chln or child then livg of any then deced child

Trust for children of living person at 25, and those dying before testator leaving issue (e).

Provision giving share of child pre-deceasing testator to its representatives (f).

Provision against lapse in gift of residuary real and personal estate (h).

Trusts of share of a son who has disappeared.

Trust for children of testator or another and children of deceased children, at 21, &c. (a).

(e) See note (a) on last page.

(f) See *ante*, p. 802, note (a)

(g) As to the danger of using words of futurity in such a clause, see note (b) on last page.

(h) See note (a) on last page. This clause differs from the last in providing against lapse, whether the devisee leaves issue or not.

(a) See the form of a separate clause substituting issue of deceased children, form 20, *infra*. The vesting in this case both as to children and grandchildren can be postponed to a later age than twenty-one, as the objects must be *in esse* at the testator's death. In trusts of this kind the rule against perpetuities should be carefully borne in mind; and gifts to remote issue of the testator, or to the issue of a stranger, especially if the vesting is postponed to a later age than twenty-one, must be restricted accordingly: *Re Dawson*, 39 Ch. D. 155; *Re Whitten*, 62 L. T. 391; *Re Barker*, 92 L. T. 831. See also *ante*, p. 801, note (b).

Rule against perpetuities.

of mine [his] who whether chln or grandchln being male attain the age of twenty-one yrs (b) or being female attain that age or marry (c), if more than one in eql shares as tenants in common, but so that the chln of any deced child of mine [his] shl take equally betn them as tenants in common (d), only the share wch their parent wd have taken had he or she survived me & attained a vested intt (e).

Trust for children who survive tenant for life, and children of deceased children, at 21, &c. (f).

19. [*Commencement as in f. 1, p. 796, or 2, p. 797.*] IN TRUST for all or any my chln or child [the chln or child of the sd——] livg at the death of the survor of myself & my wife [of the sd —— & ——] & the chln or child then livg of any then deced child of mine [of the sd ——] who whether chln or grandchln, &c., *continue as in last form.*

(b) If it be desired, for the sake of consistency, to prevent the exclusion of a son who survives the testator and afterwards dies under age leaving issue, add here, "or die under that age leavg issue."

(c) See *ante*, p. 798, note (e).

(d) Care should be taken to insert words of severance as to the shares both of the testator's children and of the children of a deceased child, to create a tenancy in common in both cases instead of a joint tenancy: see *Re Yates*, [1891] 3 Ch. 53. A joint tenancy in an equitable interest in land, whether or not the legal estate is vested in the joint tenants, may be severed: L. P. Act, 1925, s. 36 (2).

Gift of share of deceased child to issue.

(e) This is the proper way of describing the share of a child dying before the testator: see *Loring v. Thomas*, 1 Dr. & Sm. 497. The expression "the parents' share" is incorrect: see *West v. Orr*, 8 Ch. D. 60; *Re Brown*, 58 L. J. Ch. 420. A reference to the "parents" may in some cases have the effect of confining the meaning of the word "issue" to children: *Sibley v. Perry*, 7 Ves. 522; *Re Swain*, [1918] 1 Ch. 399; *Re Burnham*, [1918] 2 Ch. 196. It is conceived that a trust in the above form would obviate the difficulty raised in *Re Chinery*, 39 Ch. D. 614; *Re Musther*, 43 Ch. D. 569, and *Re Wood*, [1894] 3 Ch. 381, where (under the terms of the particular will) a child of a child who died before the date of the will was excluded.

Trust in remainder being contingent on survivorship.

(f) This form of trust making the interests of the children dependent on their being alive at the time of the trust in their favour taking effect in possession is not in general so convenient or expedient (though the draftsman is frequently instructed to adopt it) as the common form giving children who attain twenty-one, &c., vested interests, whether they survive the tenant or tenants for life or not; and a series of trusts of this description making the interests of the remaindermen contingent in each case on survivorship is often very troublesome to frame.

Rule against perpetuities.

There is also sometimes a risk of miscarriage in the case of a trust making the interests of children contingent on their surviving the period of distribution; thus in the case of a trust for A. for life with remainder to any wife whom he may marry for life, a gift in remainder to the children of A., who may be *living at the death of the survivor* of him and his wife, is too remote, as

20. IF ANY child of mine [of the sd —] shl have died (h) in my lifetime [or in the lifetime of the sd —] (whether bfe or after the date of this my will) leavg issue livg at my death [the death of the survor of myself & the sd —], such issue being male & attaing the age of twenty-one yrs or being female & attaing that age or marryg, shl take by substiton, if more than one as tenants in common in eql shares, the share in the trust fund wch such deced child of mine [of the sd —] wd have taken under the trusts in that behalf hrinbfe declared had he or she survived me [& the sd —] & attained a vested intt, but so that no issue remoter than a child of such deced child shl take, except in the case of the death of his, her, or their parent before me [the survor of myself & the sd —] & in the place of such parent.

Substitution of issue for child of testator predeceasing him, or of tenant for life predeceasing survivor (g).

21. *Commencemt as in f. 2, p. 797.* IN TRUST for all or such one or more exclusively of the others or other of the chln or remoter issue of the sd —, such chln or issue to take vested intts within twenty-one yrs after the death of the survor of myself & the sd —, other than, & except the first or only son, or any other son or sons, who bfe his or their resply attaining the age of twenty-one yrs shl become indefeasibly entled, or any daur or daurs, who bfe her or their resply attaining that age or marrying shl become indefeasibly entled to the first

Trust for issue of tenant for life excluding eldest child taking estate (a).

the wife may not be born till after the testator's death : see *Re Harvey*, 39 Ch. D. 289. So also, although life interests may be given to persons unborn at the testator's death, if they must necessarily come into *esse* within the limits of time imposed by the rule (*e.g.*, to the issue of a person living at the testator's death), care must be taken that the remainders following on such life interests to unborn persons are not too remote. Thus if the ultimate trust of the fund, or a power of appointment over it, were limited to the last survivor of such unborn tenants for life, this would be bad, as the ultimate limitation might remain in contingency beyond the perpetuity limits, and is not saved from failure by the circumstance that the ultimate taker must be one of certain persons who are ascertained within those limits, and could join in alienating the property : *Re Hargreaves*, 43 Ch. D. 401. As to perpetuity in appointments, see Vol. I., p. 84.

(g) This form can readily be adapted to the case of an immediate gift to the children of another person.

(h) As to the danger of using words of futurity in such a clause, see *ante*, p. 802, note (b).

(a) This form is so framed as to avoid the question raised in *Locke v. Dunlop*, 39 Ch. D. 387. For the exclusion of a son succeeding to a title, see *ante*, p. 524, f. 16, note (i).

intt in tail [male or in tail], eir in posson or remr, under a settlmt dated, &c., or, "the will of, &c.," at such age or time, &c., *as in f. 2. p. 797.* And in default of & subject to any such apptmt in trust for all or any the chln or child of the sd — other than & except as afsd, who being male, &c., *as in f. 4, p. 798.* And if there shl be no child other than & except as afsd, of the sd —, who being male shl attain the age of twenty-one yrs, or being female shl attain that age or marry, then in trust for such one or more of the sd excepted chln of the sd — as being male attain, &c., *as in f. 4, p. 798.*

Trust for
children
un-
equally.

22. Commencemt as in f. 1, p. 796. IN TRUST for all or any my chln or child, who being male attain the age of twenty-one yrs or being female attain that age or marry, & if more than one as tenants in common in such shares & proportions as that the share of each son shl bear to the share of each daur the same proportion as 7 does to 5, or, "in eql shares, except that the eldest or only son shl take a double share," or, "in eql shares, except that each son shl take double the share of each daur," or, "in eql shares, but so that the share of my son —, if he attains the age of twenty-one yrs, shl not be less [more] than £——, irrespective of any accumulons wch may be added thereto durg his minority," or, "in such shares & proportions as that the share of each daur shl be eql in amount to five-sevenths of the share of each son."

Thesame
another
form.

23. Commencemt as in f. 1, p. 796. UPON TRUST to pay or transfer the sum of £——, or stks, funds, or secs of equivalent value to my son — if & when he attains the age of twenty-one yrs, & to pay or transfer the sum of £——, or stks, funds, or secs of equivalent value to my daur —, if & when she attains that age or marries, & as to all the residue of the trust fund In trust, &c., *continue trust for chln*, "includg the sd — & —," p. 798, f. 4.

Hotchpot
clause (b).

24. No CHILD of mine [of the sd —], who [or whose issue] shl take any pt of the trust fund under any apptmt,

Varia-
tions in
hotchpot
clause.

(b) The value of an appointed share is its value at the death of the tenant for life: *Re Kelly*, [1910] 1 Ch. 78. As to the power of the trustees to have the trust property valued, see T. Act, 1925, s. 22 (3) (and (4)). Money advanced under a power of advancement need not be brought into hotchpot: *Re Fox*, [1904] 1 Ch. 480. Where the children of a child dying before the testator take his share by substitution, say, "No child

&c., continue as at p. 525, f. 17, omitting, if the case requires, "or to his or her issue."

25. IF ANY daur of mine wd but for this psnt provon become entitled [either by apptmt, or in default of apptmt, or partly in one way & partly in the other], to any share or shares in the trust fund wch [either alone or togr with the share or shares to wch she shl become entitled by apptmt or in default of apptmt, or partly in one way & partly in the other, in the ppty subjt to the trusts of my marre settlemt, dated, &c.], shl exceed in value the sum of £——, then unless the contrary shl be directed in some apptmt under the power hrinbfe contd, she shl not be entitled to a larger share in the trust fund than the sd sum of £——, [or such smaller sum as shl togr with her share or shares in the ppty subjt to the trusts of the sd settlemt make up the sd sum of £——] [irrespective of any accumulons wch may be added thereto while she shl be under the age of twenty-one yrs & unmarried] with intt on the sd sum of £——, [or such smaller sum as afsd,] at the rate of £—— p.c. p.a., from the death of the survor of myself & my wife, [& the residue of her share or shares in the trust fund shl be disposed of as if such daur had died bfe me witht leavg issue].

Provision restricting total amount of daughters' share.

26. THE SHARE or shares (if any) of the ppty subjt to the trusts of my marre settlemt, dated, &c., to which any child of mine [or the issue of such child or any of such issue,] shl become entitled by apptmt or in default of apptmt shl, [in default of apptmt to the contrary made by my wife after my death] after deductg all duties payable on my death or that of my wife in respt of such share or shares, be brought into account in the way of hotchpot as against such child [or his or her issue] in the division of the trust fund in the same mner

Provision directing sums taken under marriage settlement to be brought into hotchpot (c).

or grandchild of mine [of the sd ——] who or whose issue shl take, &c.," as in the text.

For a clause providing that sums taken under the testator's marriage settlement shall be brought into hotchpot, see f. 26, *infra*, and for a clause providing that advances made by the testator in his lifetime shall be brought into hotchpot, see *post*, p. 808, f. 27.

(c) For a clause in a settlement directing that a legacy shall not be deemed to be in satisfaction of a portion, see *ante*, p. 562. It must be borne in mind that where a parent or person *in loco parentis* gives a legacy to a child and afterwards advances the legatee by way of portion, the presumption of equity,

Satisfaction of legacies

as if the same formed pt of the trust fund to the intent that in the general division of my este & the trust ppty comprised in the sd settlemt, there shl be an equality betn my chln, [except that the shares of my sons shl be double those of my daurs as afsd, or as the case may be].

Advances made to children by testator in his life-time to be brought into hotchpot (e).

by portions and vice versa.

27. ALL MOYS in the nature of capital (d) or ppty wch I have given or covtd or agrd to give, or wch I may hrafter give or covt or agree to give, to any child of mine on his or her marre, or orwise for his or her advancemt or establishmt in life, shl in default of any direction to the contrary in writg under my

which leans strongly against double portions, is that the portion was intended as a satisfaction of the legacy for the whole or in part according to value; and on the other hand, a legacy given by a parent or person *in loco parentis* to a child, will be presumed to be a satisfaction complete or *pro tanto* of a portion previously secured to the legatee by the testator. As to what is sufficient to rebut these presumptions and generally on this subject, see 2 White & T. L. C., notes to *Ex p. Pye*; Robbins & Maw, 4th ed., 314 *et seq.*; *Re Scott*, [1903] 1 Ch. 1; *Re Jaques*, [1903] 1 Ch. 267; *Re Blundell*, [1906] 2 Ch. 222; *Re Heather*, [1906] 2 Ch. 230; *Re Peel*, [1911] 2 Ch. 165. The intention as to these matters should be expressed. The value of funds settled by a testator on certain children in his lifetime and by will directed to be brought into hotchpot was, in *Re Crocker*, [1916] 1 Ch. 25, held to be their value at the date of the settlement.

(d) See *Re Arbuthnot*, [1915] 1 Ch. 422, at p. 428.

Advances.

(e) This clause refers to advances by way of portion in the ordinary sense, but not to loans from the testator to a child: *Re Young*, [1914] 1 Ch. 581; *Re Warde*, 58 Sol. J. 472. Interest on advances must be calculated for the purpose of this clause at the rate of 4 p.c. p.a. from the testator's death: *Re Davy*, [1908] 1 Ch. 61; see also *Re Willoughby*, [1911] 2 Ch. 581; 28 L. Q. R. 3; or from the period of distribution, if later than the testator's death: *Re Lambert*, [1897] 2 Ch. 169. Circumstances may show that a gift made by the testator to a child subsequent to the date of the will is not an advance within the meaning of the clause: *Re Scott*, [1903] 1 Ch. 1; *Re Watney*, 56 Sol. J. 109. As to the manner in which advances are to be brought into account, see *Re Hargreaves*, 88 L. T. 100; *Re Rees*, 17 Ch. D. 701; *Re Poyser*, [1908] 1 Ch. 828; *Re Hart*, 107 L. T. 757; *Re Craven*, [1914] 1 Ch. 358; and the cases cited, *ante*, p. 788, note.

Reversions to be brought into hotchpot.

If the money covenanted to be paid by the testator may be payable after his death it may be convenient (so as to avoid the rule that reversionary interests directed to be brought into hotchpot must be valued *Eales v. Drake*, 1 Ch. D. 217)) to add the words following, "Provid that if any moy hby directed to be brought into hotchpot shl be payable after my death it shl not be brought into hotchpot until it shl be actually payable, & my trees may make such arrangemts as they may think fit for carryg the sd provons as to hotchpot into effect either by payg the whole of such share to

hand (f) be taken in or towards satisfaction of the share of such child [or his or her issue taking by substitution as aforesaid] in the trust fund, & shall be brought into hotchpot & accounted for accordingly.

28. THE SUMS, amounting to £——, which I have advanced by way of loan to my son ——, & any other sum or sums which I may hereafter advance to him or for his benefit, or so much thereof as may be owing to me at my death, & the interest thereon, shall not be charged or claimed as a debt owing to me from him or his representatives (h), but every such sum (whether legally constituted

Provision for debtor bringing advances into hotchpot when his share is settled (g).

such child [or to his or her issue taking by substitution as aforesaid] & taking a bond or covenant from such child [or such issue] for refunding the said share or any part or parts thereof in such manner & at such time or times as will satisfy the said provisions as to hotchpot, or by retaining the whole or such part as in their discretion they may think fit of such share & investing the same & from time to time as & when any money hereby directed to be brought into hotchpot shall become payable sell a sufficient part of the said investments & applying the proceeds in carrying the said provisions as to hotchpot into effect. Provide also that the interim income of such investments shall be paid to the child [or issue] from whose share such investments shall be made, & further that if at the time when such retainer shall be made the amount retained shall be sufficient to satisfy the said provisions as to hotchpot, & if for any reason the proceeds of the investments thereof shall be insufficient to satisfy such provisions no further part of the share of such child [or issue] shall be brought into hotchpot, & if the said investments or the proceeds thereof shall be more than sufficient to satisfy the said provisions as to hotchpot & the costs of carrying them out the surplus shall revert to & form part of the share from which it proceeded."

(f) This is a valid condition limiting the application of the hotchpot clause to advances of a particular description: *Re Arbuthnot*, [1915] 1 Ch. 422; see *Re Deprez*, [1917] 1 Ch. 24.

(g) As to this, see 4 *Dav. Prec.*, 3rd ed., 157, note; *Re Trollope*, [1915] 1 Ch. 853, 865. As to a mistake in the will with regard to the amount of advances, see *Re Taylor*, 22 Ch. D. 495; *Re Wood*, 32 Ch. D. 517; *Re Kelsey*, [1905] 2 Ch. 465.

(h) Unless the debts are expressly released, the question may arise as to whether, in the event of the indebtedness being greater than the benefit received under the will, the debtor is to remain liable for the difference; *Re Trollope*, [1915] 1 Ch. 853; *Re Clark*, [1924] W. N. 75. In the case of settled shares, unless the debt is released it may on construction be held to continue for the benefit of persons entitled under the settlement: *Re Barker*, [1918] 1 Ch. 128.

a debt or not) with intt thron from my death at the rate of £—— p.c. p.a. (but not any intt thron prior to my death), shl be brought into account by way of hotchpot in the division of the trust fund as against the sd —— & his wife & chln or other the pson or psons interested in his share of the trust fund under the trusts hrinbfe declared.

SETTLEMENT OF CHILDREN'S SHARES (a).

Com-
mence-
ment¹ of
trusts of
daugh-
ters² or
children's
shares.

1. THE SHARE of the trust fund (b) hrinbfe given (c) to each daur [child] of mine (d) [other than the share or, "legacy," of any daur who shl be under coverture at my death weh wd if given to her absolutely become settled by virtue of an agrmt contained in her marre settlemnt] shl not vest absolutely in such daur [child], but shl be retained by my trees & held by them Upon the trusts hrinar declared concerng the same resply (e).

(a) See *ante*, p. 791, note (a).

(b) Where legacies are being settled, say, instead of "the share of the trust fund," "The legacy," and make corresponding alterations in the subsequent forms.

Children
prede-
ceasing
testator.

(c) It should be remembered that where the primary trust is for the children as a class or *nominatim*, a child predeceasing the testator would in the former case, unless express provision to the contrary is made, be excluded, whether leaving issue or not: see *ante*, p. 802, note (a); and in the latter case, although if the child leaves issue this would be prevented (if the gift is to a child of the testator) by s. 33 of the Wills Act, 1837, if he should leave no issue there would be a lapse of his share, unless it is settled and one at least of the *cestuis que trust* survives the testator: *Re Pinkhorne*, [1894] 2 Ch. 276; *Re Powell*, [1900] 2 Ch. 525; *Re Walter*, 56 Sol. J. 632. Express provision for these events should therefore be made; see ff. 16 and 17, *infra*, pp. 815, 816.

Where there is an absolute gift of property followed by a settlement of that property, and the settlement wholly or partially fails, there is no intestacy, but the person to whom the original gift was made takes; *Lassence v. Tierney*, 1 Mac. & G. 551; (cf. *Re Cohen*, 60 Sol. J. 239). *Hancock v. Watson*, [1902] A. C. 14; *Re Currie*, [1910] 1 Ch. 329; and see *Re Connell's Settlement*, [1915] 1 Ch. 867; *Re Harrison*, [1918] 2 Ch. 59; *Re Atkinson*, [1925] W. N. 30. The rule is the same as regards realty; *Moryoseph v. Moryoseph*, [1920] 2 Ch. 33.

(d) If the trusts of each share are declared separately, say, "given to my daur [son] ——," and make corresponding alterations in the remaining trusts.

Varia-
tions
for trust

(e) In most cases, as where the widow takes a life interest, the trust for investment and varying investments will precede the trust for division among the children; but if not, and the fund consists of money, the first

2. DURG THE life of such daur my trees shl pay the income of such share to her (*f*) & so that durg coverture the same shl be witht power of anticipon.

Life interest to daughter without anticipation.

3. DURG THE life of such child my trees shl pay the income of such share to him or her, & so that in the case of a daur the same shl durg coverture be witht power of anticipon.

Life interest to son or daughter (*g*).

4. AFTER THE death of such daur [child] my trees shl pay the income of such share to any husbd [wife or husbd] whom she [he or she] may leave survivg durg the life of such husbd [wife or husbd].

Second life interest to any husband or wife (*h*).

5. AFTER THE death of my daur [son] —, my trees shl pay the income of such share to her husbd [his wife] —, if survivg durg his [her] life, [& so that durg her psnt or any future coverture the same shl be witht power of anticipon].

Second life interest to present husband or wife.

6. AFTER THE death of such daur [child], [*if survivg husbd or wife take life interests, say, "of such daur & her survivg husbd (if any)" or, "of such child & his or her survivg wife or husbd (if any)"*] my trees shl hold such share & the future income throf In trust for all or such one or more exclusively of the others or other of the chln or remoter issue of such daur

Power of appointment among children or remoter

trust will be:—"My trees shl with the consent in writg of such daur [child] if livg & of full age, & at any other time at the discron of my trees," or, "with the consent in writg of the pson for the time being benefly entitled for his or her life to the income of such share, if of full age, & if there shl be no such pson, at the discron of my trees;" or, *if the trusts of each share are declared separately*, "with the consent in writg of the sd —, if livg & of full age, & at any other time at the discron of my trees," invest such share in the names or under the legal control of my trees, in or upon any investmts hby authorised with power with such consent or at such discron as afsd to vary or transpose any investmts for or into others of any nature hby authorised. For investment clauses, see *ante*, pp. 537, *et seq.*

for investment with consent.

(*f*) If the daughter may be under age, provision for maintenance, &c., should be made, unless the statutory power is relied on; see form 1, *post*, pp. 825 *et seq.*; and *ante*, pp. 526 *et seq.*, notes.

(*g*) For forms for life interests determinable on bankruptcy, &c., or protected against creditors, &c., see *ante*, pp. 517 *et seq.*

(*h*) It is better to give the daughter a power to appoint a life interest to a surviving husband, as at p. 813, f. 12.

issue of daughter or child (i). [child] (a), &c., *continue power of apptmt to daur or child, or to both parents or survivor, as at pp. 797 or 798, ff. 2 or 3, mutatis mutandis* (b).

Trust for children in default of appointment. 7. AND IN DEFAULT of & subj't to any apptmt under the power [either of the powers] hrinbfe contd, In trust for all or any the chln or child of such daur [child] who shl be livg at my death or born afterwards, & who being male attain the age of twenty-one yrs (c), or being female attain that age or marry & if more than one in eql-shares.

Hotchpot clause (d). 8. *Hotchpot*, p. 525, f. 17, *saying*, "child of such daur [child] who or whose issue shl take any pt of the share (e) of such daur [child] under any apptmt, &c."

Ultimate trust of settled 9. IF THE trusts hrinbfe declared concerng the share of any such daur [child] of mine as afsd shl fail, then subj't to the trusts,

Implication of gift in absence of appointment. (i) As to the circumstances in which a gift to children and issue will be implied in the absence of any appointment, see *Brown v. Higgs*, 4 Ves. 708; 8 Ves. 561; *Re Hughes*, [1921] 2 Ch. 208; *Re Llewellyn's Settlement*, [1921] 2 Ch. 281. Such a gift will only be implied where the construction of the will shows an intention on the part of the testator to create a trust in favour of the children and issue: *Re Coombe*, [1925] Ch. 210.

Restriction of power within limit of perpetuity. (a) If the surviving husband or wife is given a power of appointment, restrict the objects of the power by saying, "such chln or issue to take vested intts within twenty-one yrs from the death of such daur [child]." See *Re De Sommer*, [1912] 2 Ch. at p. 630. and Vol. I., p. 85, note. As, however, limitations in default of a power which is void for remoteness are not invalid unless they also offend against the rule as to perpetuities (*Re Abbott*, [1893] 1 Ch. 54; and see *Re Bowles*, [1905] 1 Ch. 371; *Re Davies & Kent*, [1910] 2 Ch. 35) the existence of such a power would not invalidate the gifts to the children.

(b) For provisions as to the exercise of this power where the tenants for life take protected life interests, &c., see *ante*, p. 530, f. 24.

(c) If it is desired to extend the age to twenty-five years where possible, say "being male attain the qualifying age hrinar mentd, &c.," adding at the end of the form "The qualifying age hrinbfe referred to shl be the age of twenty-one yrs except in the case of any child who shl or wd if livg attain the age of twenty-five yrs before the expiron of twenty-one yrs from the death of such daur & in the excepted case shl be the age of twenty-five yrs.

(d) For maintenance, accumulation and advancement clauses, adapted to this case, which unless omitted in reliance on the statutory provision would usually follow the hotchpot clause, see *post*, pp. 825 *et seq.*

(e) Where the share may be increased by accruer, say "whether original or accruing."

powers, & provons hrin declared & contained & to the powers by law vested in my trees concerng the same, & to every or any exercise of such respective powers, my trees shl hold such share & the income throf, In trust for such pson or psons, for such pposes, & in such mner in all respects as such daur [child] shl by will or codl appt.

share for
testamen-
tary ap-
pointees
of child.

10. AND IN DEFAULT of, & subjt to any such apptmt, such share & every additional share wech may accrue or be added thereto by virtue of this psnt provon shl go & accrue by way of addition to the share or shares of my other chln or child, if more than one in eql shares (*f*), & so that the share wech shl so accrue & be added to the share of any daur [child] of mine shl be held Upon the trusts, & subjt to the powers & provons hrin declared & contained concerng her [his or her] origl share, or as near thto as circes will admit.

Accruer
clause in
default of
appoint-
ment.

11. AND IN DEFAULT of & subjt to any such apptmt, In trust for such pson or psons as wd have been entitled thereto under Part IV. of the Admon of Estes Act, 1925 (*g*), at the death of such daur, had she died possed throf intestate [domi- ciled in England (*i*)] & witht havg been married, such psons, if more than one, to take in the shares and mner in wech they wd have taken under the sd Part of the sd Act.

Trust in
default of
appoint-
ment for
persons
entitled
on daugh-
ter's in-
testacy
excludng
surviving
husband
(*h*).

12. (i.) EVERY DAUR of mine [in case she shl have no child or remoter issue who shl attain a vested intt in her sd share], may by any deed or deeds, revocable or irrevocable, executed prior to & in contemplon of marre or by will or codl, appt to or for the benefit of any husbd who may survive her an intt for his life or any less period in the whole or any pt of her sd [such] share, [whether origl or accruing] upon protective trusts for the benefit of such husbd or orwise & subjt to any condons she may think fit.

Power to
daughter
to ap-
point life
interest
to her
husband.

(ii.) Such daur may appt that if the intt so appted to such husband shl fail or be determined under the trusts applicable thrto or a condon in such apptmt contd, the same shl, durg the residue of the life of such husbd, be applied at the discreon

(*f*) If the original shares are unequal, say, "in the same shares & proportions as their origl shares."

(*g*) See *post*, p. 935, note.

(*h*). For notes on this form, see further, *ante*, pp. 532, 533; and *post*, p. 822.

(*i*) As to these words, see *Re Fergusson*, [1902] 1 Ch. 483.

of the trees for the benefit of such husbd & such other pson or psons as such daur may declare.

(iii.) The intt so appted unto or for the benefit of such husbd shl take effect in priority to all other trusts & provons hrinbfe deeld & contd concerng the share of such daur to take effect after her death, & so that the power of advancemt applicable herto in favour of her chln or issue shl not be exercised after such apptmt shl have taken effect so as to affect the intt of such husbd witht his consent in writg.

Variation enabling her to associate him with herself in the power of appointment in favour of children (a).

[(iv.) SUCH DAUR may by deed executed either bfe or after her marre, with the concurrence of her husbd or intended husbd, if he be born in my lifetime (b), modify the power of apptmt hrinbfe given to her over such share in favour of her chln or remoter issue, by makg the same exercisable as to all or any pt of such share by such daur & her husbd jointly by deed, revocable or irrevocable, & in default of & subjt to any such joint apptmt by the survor of such daur & her husbd in like mner or by will or codl.]

Trusts of daughter's share by reference where shares separately settled.

13. THE SHARE of the trust fund, [or "The legacy"] hrinbfe given to my daur L. shl not vest absolutely in her but the same & the income throf shl be retained by my trees & held by them Upon the like trusts & subjt to the like powers & provons in favour of my daur L. & her [husbd & testy apptees] issue & orwise [& with the like provon on failure of the prior trusts for accruer or addition to the other shares in the trust fund] as are hrinbfe declared & contained concerng the share [legacy] of the sd K., & the income (c) throf, in the same mner in all respects as if such trusts, powers, & provons were hrin repeated with the substition of the name of the sd L. for the name of the sd K. save & except, &c., *specify any variations in the trusts.*

Legacy to a daughter or son settled by

14. I GIVE the sum of £—— to my trees Upon the like trusts, & subjt to the like powers & provons in favour of my daur L., & her [husbd] issue & testy apptees & orwise, or, "my

(a) A general power to the trustees to vary the trusts declared by the will of a daughter's share on her marriage or otherwise, and to appoint other trustees of such share with her consent, is sometimes useful: see *post*, p. 816, f. 18.

(b) See note (a), *ante*, p. 812.

(c) If a son's legacy is settled by reference to a daughter's, a simple life interest should be substituted for a life interest with a restraint on anticipation; and *vice versâ*.

son L., & his [wife], issue, &c.," as are herein declared & contained of & concerning the sd sum of £—— in favour of my daur K. & her [husbd] issue & testy apptees & orwise, or, "my son K. & his [wife], issue, &c.," [except that the power to appt a life intt to a surviving husbd, shl include the psnt husbd of the sd L. & shl not be confined to a future husbd as the power of the sd K. is herein confined, or, "except that the husbd of my sd daur L. shl not take a life intt thrin," & except that, *specify any other variations.*]

referen
with
varia-
tions.

15. IF ANY daur [child] of mine shl attain the age of twenty-five yrs & no act or event shl have been done or happened whereby her [his or her] life intt in the share [whether origl or accruing] in the trust fund herein declared to be held upon trusts in favour of such daur [child] wd if belongg absolutely to her [him or her] have become vested in or charged in favour of some other pson (e), my trees may at their discreon pay or transfer such share to such daur [child] for her [his or her] absolute benefit free from the trusts herein declared concerning the same.

Power to
trustees
to trans-
ferred
share to
child (d).

16. IF ANY daur [child] of mine shl die [or have died (g)] in my lifetime [leaving issue livg at my death (h)], then the share or shares, whether origl or accruing, in the trust fund herein declared to be held upon trusts for such daur [child] & her [his or her] issue or orwise as afd & the income throf shl be held Upon the same trusts & with & subj to the same powers & provons so far as the same shl be subsistg & capable of takg effect as if such daur [child] had [attained the age of twenty-one yrs & had] died immedly after me (i).

Trusts of
share of
child
dying in
testator's
lifetime
(f).

(d) Cf. f. 21, *ante*, p. 763.

(e) Person includes a corporation and the singular includes the plural : L. P. Act, 1925, s. 61.

(f) As s. 33 of the Wills Act, 1837, does not apply where the shares are given to children as a class (see *ante*, p. 802, note (a)) or to collaterals or strangers : *Re Roberts*, 30 Ch. D. 234 ; *Re Whitmore*, [1902] 2 Ch. 66 ; in such cases the clause in the text will be required. For a form making lapsed shares fall into residue, see *post*, p. 821, f. 9.

(g) The words in this bracket are intended to meet the exceptional case of a child having died abroad without the knowledge of the testator before the date of the will : see *ante*, p. 802, note (b).

(h) The words in this bracket will be inserted where the husband or wife of a deceased child is not intended to benefit unless the deceased child leaves issue living at her or his death.

(i) Any power of appointment given to the daughter must, of course, in this event fail : see *Jones v. Southall*, 32 Beav. 31.

Trusts of
share of
son dying
in testa-
tor's life-
time (a).

17. IF ANY son of mine shl die [or have died (b)] in my life-time, having attained the age of twenty-one yrs (c)] then the share or shares, whether origl or accrug, in the trust premes hrinbfe bequeathed in trust for him in the event of his surviving me [add, if this is the case, & attaining the age of twenty-one yrs] & the income throf shl be held In trust for all or any his chln or child, &c., *continue trust for chln at twenty-one, &c.*, p. 798, f. 4. And if there shl be no such child, shl go & accrue by way of addition, *continue as in accruer clause*, p. 813, f. 10.

Power to
trustees
to settle
daugh-
ters'
shares.

18. (i.) MY TREES may at their discreon at any time durg the life of any daur of mine who shl marry after my death [& under the age of — yrs], & either in contemplon of or after her marre, settle all or any pt of the share in the trust fund [legacy] hrinbfe given to such daur upon such trusts as my trees shl think fit for the benefit of such daur & her husbd or intended husbd & any future husbd & any chln or remoter issue of hers (whether by her then psnt or intended husbd or any future husbd), or for the benefit of any of such objects, & with such ulterior or ultimate trusts [such trusts being for the benefit of some issue of mine or their respective husbds or wives or all or any of the psons who wd be entitled thрто under Part IV. of the Admon of Estes Act, 1925, if any such issue died possed, of the sd share [legacy] intestate], & with such other provons as my trees shl think fit.

(ii.) My trees or any or either of them may act as the trees or tree of such settlemnt, or nominate any other psons or pson or trust corporon to act either alone or in conjunction with them or any or either of them as such trees or tree.

(iii.) The paymt or transfer of the share in the trust fund [legacy] of such daur may be wholly or partially suspended by my trees accordgly durg the whole lifetime of such daur or, “until she shl attain the age of — yrs,” or such less period as my trees may think fit, & the income of the share [legacy] or pt throf so retained shl be pd to such daur after she shl have attained the age of twenty-one yrs or married & become entitled to such share [legacy] in posson, witht power of anticipon until such settlemnt throf as afsd shl be executed.

(a) See note (f) on last page.

(b) See note (g) on last page.

(c) These words will be inserted if it is intended to exclude children of a son dying in the testator's lifetime under twenty-one and leaving issue.

(iv.) My trees may at their discreon, pay or transfer the share [legacy] of such daur or any pt throf to her, in weh case the power hrinbfe given to my trees to settle the same shl cease as regards the share [legacy] or pt throf so pd or transferred.

19. (i.) I GIVE the sum of £—— to my trees to be settled by them for the benefit of my son —— & his wife & chln or remoter issue, or any of them, for such estes & intts, & with or witht any protective or other discreonary trusts or powers as to the applicon of income or capl for their respective benefit, to be vested in the trees or tree of such settlemt or any other pson or psons, or trust corporon, & with or witht any powers of apptmt (whether special or general), to be vested in my sd son & his wife or either of them, includg power to my sd son to make a settlemt on a future marre, & with such ulterior or other trusts, powers, or limitations over on failure of the primary trusts or limitations for the benefit of any of my issue, & generally in such mnner as my trees in their discreon may think expedient, & with such powers & provons as to investmt & varyg investmts, & the apptmt of trees & such other clauses & provons (whether usual or special) as the circes of the case may appear to them to require or render expedient, it being my intention to give to my trees the widest discreon as to the frame of such settlemt.

Bequest to trustees to make a settlement on a son.

(ii.) My trees may appt a separate set of trees of the settlemt to be made as last afsd if thought pper, [& the receipt of the trees or tree for the time being of such settlemt for any moys, stks, funds or secs pd or transferred to them or him upon the trusts throf shl be an effectual discharge to my trees for the same & exonerate them from all further responsibility in relation thereto (a)].

20. My trees may with the consent (b) of my son [daur] A. in contemplon of his [her] marre revoke the trusts hrinbfe declared concerning & affecting the sd legacy of £—— hrinbfe bequed in trust for him [her] & his [her] issue & resettle the same upon such trusts for the benefit of the sd A. his wife [her

Power to revoke trusts of and resettle a settled legacy.

(a) The words in brackets may generally be omitted; see T. Act, 1925, s. 15.

(b) Under this clause an infant beneficiary can consent to the exercise of the power of revocation and resettlement conferred on the trustees: *Re Sutton*, [1921] 1 Ch. 257.

husband] & issue & with such powers & provons as my trees shl deem pper.

Trust for
spend-
thrift
child (c).

21. (i.) & (ii.) I GIVE the sum of £—— to my trees Upon trust that my trees shl invest the same at their discreon in any of the investmts hby authorised, with power from time to time to vary such investmts at discreon, And shl from time to time durg the life of my son A. or durg such shorter period or periods either continuous or discontinuous as they shl in their absolute discreon think fit, pay all or any pt of the income of the sd sum of £—— & the investmts throf upon protective trusts for the sd A. with power at their discreon from time to time to pay or apply any part of the capl throf for the benefit of the sd A. as if they were the beneficial owners of such income & capl.

(iii.) AFTER the death of the sd A. my trees shl pay the income of the sd sum of £—— & the investmts throf or of such pt throf as shl remain undisposed of, to his widow (if any) durg her life [widowhood] witht power of anticipon.

(iv.) AFTER the death [or marre] of such widow (if any), *continue trust for children of A. at twenty-one, &c.*, p. 798, f. 4.

(v.) In the event of the failure or determinon of the trusts hrinbfe declared concerng the sd sum of £—— & the investmts throf, & subjt to the trusts, powers & provons hrinbfe declared & contained concerng the same & to every or any exercise of such powers, the same or such pt throf as shl remain undisposed of shl sink into my residuary este.

Trust for
imbecile
or lunatic
child.

22. (i.) I GIVE the sum of £—— to my trees Upon trust *to invest & vary investmts, as in last form*: And shl durg the life of my son [daur] A., at their absolute discreon pay or apply the whole or any pt of the annual income of the sd sum of £—— & the investmts throf, or if they shl from time to time think fit any pt of the capl throf, to or for the maintee & psonal support or benefit of the sd A., & may either themselves so apply the same or may pay the same for that ppose to any other pson or psons witht seeing to the applicon throf.

(ii.) My trees shl durg the period of twenty-one yrs from my death, if the sd A. shl so long live, accumulate the surplus

(c) See other forms, *ante*, p. 777, and p. 793, note (a).

(if any) of such income by investg the same & the resultg income throf by way of addition to the capl of such fund, & so as to be subjt to the same trusts as are hby declared concerng such capl, & shl durg the remr of the life of the sd A. if he [she] shl survive the sd period of twenty-one yrs pay or apply such surplus income (if any) to the pson or psons & for the pposes to whom & for wch the same wd for the time being be payable or applicable if the sd A. were then dead:

(iii) After the death of the sd A., & subjt to the trusts afsd, my trees shl stand possessed of the sd sum of £——, & the investmts & accumulons throf, or so much throf as shl not have been applied or disposed of under the trusts afsd, IN TRUST, &c.

MISCELLANEOUS BENEFICIAL TRUSTS (d).

1. SUBJT to the trusts afsd & to the powers hby or by law vested in my trees & to every or any exercise of such respective powers, *or as the case may be*, my trees shl hold the trust fund & the income throf In trust for all or any my brothers or brother & sisters or sister livg at my death (e) [who being male attain the age of twenty-one yrs or being female attain that age or marry], & the chln or child then livg who being male attain the age of twenty-one yrs or being female attain that age or marry, of any then deced brother or sister of mine, in eql shares, but so that the chln of any deced brother or sister of mine shl take equally betn them only the share wch their parent wd have taken if he or she had survived me [& attained a vested intt].

Trust for brothers and sisters of testator living at his death and children of those dead *per stirpes*.

2. SUBJT, &c., *as in f. 1*, In trust for all or any the chln or child of my sd nephews & nieces livg at the death of the survor of my sd nephews & nieces [who being male attain the age of twenty-one yrs, or being female attain that age or marry] & the chln or child then livg who being male attain the age of twenty-one yrs or being female attain that age or marry,

Trust for children of nephews and nieces living at time of distribution and

(d) See *ante*, p. 791, note (a).

(e) The class of brothers and sisters must be limited to those living at the testator's death to avoid a perpetuity if the parents are still alive: see *Ward v. Van der Loeft*, [1924] A. C. 653.

children
of those
dead *per*
stirpes (f)

of any then deced child of any of my sd nephews or nieces, if more than one in eql shares, but so that the grandchln of any nephew or niece shl take equally betn them only the share wch their parent wd have taken had he or she lived [to attain a vested intt].

Trust for
named
persons
living at
deter-
mination
of prior
trusts,
and
the issue
of those
dead *per*
stirpes (a).
Trust for
various
persons
un-
equally.

3. SUBJT, &c., as in f. 1, In trust for such of my brothers, *namg them*, & sisters, *namg them*, as shl be livg at the time of the failure or determinon of the prior trusts hribfe contd (g), & the issue then livg & attaing the age of twenty-one yrs, or in the case of females marrying, of such of my sd brothers & sisters hribfe named as shl be then dead, in eql shares *per stirpes* (c).

4. SUBJT, &c., as in f. 1, In trust to divide the trust fund into — eql shares, & to hold one of such shares In trust for such of the chln of my deced brother — as shl be livg at my death who being male attain the age of twenty-one yrs or being female attain that age or marry if more than one in eql shares, & to hold two other of such shares In trust for my sister —, or if she shl die in my lifetime then In trust for such of her chln, &c., as above; & shl hold one other of such shares In trust for each of the followg psons, namely, *names* :

(f) Where a trust for a class of persons living at the period of distribution follows several prior trusts, it may be more convenient to adopt the next form. Gifts to relatives do not *primâ facie* include relatives by marriage. As to nephews and nieces, see *Wells v. Wells*, L. R. 18 Eq. 504; *Re Green*, [1914] 1 Ch. 134; and see as to what persons are included under gifts to various relatives, *Hayes & Jarman*, 14th ed., p. 196, note (e).

(g) Or, “at the time when this psnt trust shl take effect in posson.” Both this form and that in the text may, however, be open to objection where the prior trusts may be liable to determine as to different parts of the property at different times.

Cf. the gift in *Re Bentley*, 110 L. T. 623.

(a) Where the trust in remainder is (as in this form) in favour of those members of the class who are then living (which is not in general a desirable form of disposition), care must be taken not to postpone the vesting beyond the limits allowed by the rule against perpetuities, namely, a life or lives in being at the testator's death, and twenty-one years afterwards: see *ante*, p. 803, note (a).

(c) As the issue of a brother or sister may comprise more than one generation, a direction that they should “take equally between them” the deceased brother's or sister's share might produce inequality as between the families comprised in such issue; hence the use of the expression “*per stirpes*.” See *Re Alexander*, [1919] 1 Ch. 371.

PROVD that if the trusts hrinbfe declared of any of such — shares shl fail, then the share or shares as to wch there shl be such failure (includg any further share added thereto by virtue of this psnt provon) shl accrue & be added in eql proportions to the others of such — shares, & shl be held In trust accordgly.

5. IF THE trusts hrinbfe declared shl fail or determine, then subjt to the trusts, powers, & provons hrinbfe declared & contained, & to the powers by law vested in my trees & to every or any exercise of such powers, my trees shl hold the trust fund & the income throf In trust, &c.

Ultimate trust, commenced.

6. IF THERE shl be no child of mine, or, “of the sd —,” livg at my death, or born afterwards, who, being male, attains the age of twenty-one yrs, or being female, attains that age or marries, then, subjt to the trusts & powers hrinbfe declared & contained, & to the powers by law vested in my trees & to every or any exercise of such powers, my trees shl hold the trust fund & the income throf In trust, &c.

Ultimate trust in default of children of testator or another person(d).

7. SUBJT, &c., as in f. 1, In trust for such pson or psons & for such pposes as the sd — shl while discovert by any deed or deeds revocable or irrevocable or whether covert or discovert by will or codl appt: And in default, &c., *continue trust for psons entitled on intestacy* “of the sd —,” p. 813, f. 11.

Ultimate trust in favour of married woman excluding husband and children dying infants (e).

8. SUBJT, &c., as in f. 1, In trust for the psons or pson who wd at my death have been entitled to my psonal este under Part IV. of the Admon of Estes Act, 1925, if I had died possessed throf intestate, [or, “who wd at the time of the failure or determinon of all the prior trusts hrinbfe declared have been entitled &c., if I had died at the time of such failure or determinon intestate,”] (f) such psons, if more than one, to take in the shares & mnner in wch they wd have taken under the sd Part of the sd Act.

Ultimate trust for persons entitled on intestacy.

9. IF ANY of my sd chln shl die in my lifetime witht leavg issue livg at my death, the share in the trust fund hby given

Variation where ascertainable at failure of prior trusts.

Accruer of shares

(d) If issue take their parent's share use f. 5, *sup*.

(e) See *ante*, p. 532, note (g). It is assumed that there is a prior trust for the children who attain twenty-one, &c.

(f) It must be clearly indicated at what period the persons to take are to be ascertained: see *Bullock v. Downdes*, 9 H. L. Cas. 1; *Sturge v. G. W. Rly. Co.*, 19 Ch. D. 444; *Re Wilson*, [1907] 2 Ch. 572; *Re Winn*, [1910] 1 Ch. 278; *Re Mellish*, [1916] 1 Ch. 562; *Hutchinson v. National Refuges for Homeless and Destitute Children*, [1920] A. C. 794.

of residue of children dying in testator's lifetime where the gifts are to them
 • by name (g).

General clause imposing restraint on interests given to females (a), and restraining alienation of life and reversionary or expectant interests in personal estate (b).

Lapse of shares of residue.

to such child, *if the daughter's shares are settled, say*, "being a son, or for the benefit of such child being a daughter & her issue," sh^l sink into & form pt of the trust fund, & be held & applied for the benefit of the other persons entitled thereto in the same manner as if the child of mine so dying with^out leaving issue had been orig^lly excluded from tak^g a share in the trust fund.

10. (i.) IN EVERY case in wch any estate or int^{ty} whether absolute or limited & whether in possession, reversion, remainder, or expectancy, & whether in real or personal estate is by this my will (h) given to or in trust for any female, she sh^l not during any coverture have power to dispose of or charge the same or any pt thereof by way of anticipation.

(ii.) If any act or event [other than the exercise of any power conferred hereby or by statute] sh^l be done or happen (whether in my lifetime or after my death) whereby any life int^{ty} in personal estate or any annuity (other than a life int^{ty} or annuity for the time being subj^t to a restraint on anticipation as

(g) The general rule is that a share of residue the gift of which fails (*Bagwell v. Dry*, 1 P. Wms., 700; *Page v. Page*, 2 P. Wms., 489) or is revoked (*Cresswell v. Cheslyn*, 2 Eden, 123) is undisposed of; but where there is a gift over which shows that the testator intended that no part of the residue should remain undisposed of, the share falls back into residue and passes as part of the residue as if the original disposition of the share had never been made: *Re Parker*, [1901] 1 Ch. 408. Where this result is intended, the clause in the text should in any case be inserted, and will be effectual: *Re Palmer*, [1893] 3 Ch. 369; *Re Allan*, [1903] 1 Ch. 276; *Re Wand*, [1907] 1 Ch. 391; cf. *Re Wilkins*, [1920] 2 Ch. 63.

(h) The expression "this my will" in a general clause will include a codicil; *Re Smith*, [1916] 2 Ch. 368.

(a) See *ante*, p. 515, note; and as to restraining anticipation in the case of absolute interests, see *ante*, p. 757, note (d). As a restraint on anticipation is in effect a super-added limitation, it may be void for perpetuity, though the gift itself is good; but a general clause restraining anticipation is severable, so as to be valid in those cases where the rule against perpetuities is not infringed: *Re Ferneley*, [1902] 1 Ch. 543; *Re Game*, [1907] 1 Ch. 276.

(b) A forfeiture clause is repugnant to a gift in fee simple in possession or an absolute gift of personalty: Co. Litt. 223 a; *Re Dugdale*, 38 Ch. D. 176; *Corbett v. Corbett*, 14 P. D. 7; *Metcalf v. Metcalf*, [1891] 3 Ch. 1; and where it is applicable both to vested and contingent gifts, it is repugnant to both; *Re Smith*, [1916] 1 Ch. 369. As to how a forfeiture may be incurred, see *ante*, p. 517, note. As to the failure of s. 33 of the T. Act, 1925, to apply where a case for forfeiture has arisen before the commencement of the life interest, see *ante*, p. 792, note (h).

afsd) hby given to or in trust for any pson, or any pt throf respby, wd if belonging to him or her absolutely become vested in or charged in favour of any other pson, then such life intt or annuity shl cease as if he or she were dead : And in the event of a life intt so ceasg the income wch shl be so forfeited shl durg the remr of the life of the pson incurrg the forfeiture throf be held Upon the trusts upon wch the same would for the time being be held if such person were dead.

(iii.) If any act or event shl be done or happen, whether in my lifetime or after my death, bfe the time hby appted for the vestg in posson of any legacy or share of psonal este (other than a legacy or share of psonal este for the time being subjt to a restraint on anticipon as afsd) hby given to or in trust for any pson [other than a settlmt of such legacy or share or some pt throf made bfe or after the marre of the legatee with the consent in writg of my trees], whereby the pson entitled thereto under the trusts or provons hrinbfe contd wd, if the sd legacy or share belonged to him or her absolutely, be deprived of the psonal enjoymt throf or of any pt throf, then such legacy shl sink into my residuary este & such share shl be disposed of as if the legatee incurrg such forfeiture had died in my lifetime witht leavg issue.

(iv.) My trees shl not be liable or responsible for payg any income, annuity, or legacy, or payg or transferg any share of residue to any pson after the failure or determinon of the trust hrinbfe declared in his or her favour, unless my trees shl have received express notice of the act or event causing such failure or determinon before makg such paymt or transfer.

11. (i.) IF ANY child of mine shl die in my lifetime leavg a wife or husbd or a child or chln [or remoter issue] livg at my death, then my trees shl stand possed of the share in the trust fund to wch such child wd have been entitled had he or she survived me [& attained the age of twenty-one yrs] upon & subjt to such trusts, powers, & provons in favour of the survivg wife or husbd & child & chln [& remoter issue] respby of such deced child of mine as shl correspond with the trusts powers & provons hrinbfe declared concerng the trust fund in favour of my wife & child or chln [& remoter issue] respby, in the same mner as if such trusts, powers, &

Clause
declaring
trusts in
favour of
family of
child
dying in
testator's
lifetime
by refer-
ence to
trusts for
testator's
widow
and
children.

provons were hrin repeated with such modificons as the case may require [except that the survivg wife or husbd (if any) of such deced child of mine shl not have any power of apptmt among the issue of such child].

(ii.) If the trusts hrinbfe declared concerng the share of such deced child of mine shl fail, such share & the income throf shl, subjt to the trusts & powers afsd or arisg by operon of law, fall into & revert to my residuary este.

Provision
as to divi-
sion of
trust fund
where
female is
past
child-
bearing
(c).

12. IF THE sd — shl attain the age of, *fifty*, yrs, then my trees may distribute the trust fund or such pt throf as wd then be distributable if she were dead, witht regard to the possibility of her havg other or any chln, [but so that every child of hers to whom a share in the trust fund shl be pd or transferred durg her life shl, if required by my trees, enter into a bond or covt at the expse of my este for refundg a proportionate pt of the same in the event of her havg any other child or chln who shl attain a vested intt in the trust fund].

Option to
sons to
purchase
real or
leasehold
estate at
a fixed
price or
valuation
(d).

13. (i.) MY SONS —, —, & —, shl have the option in succession accordg to their respective seniorities of pchasz my — & ppty situate, &c., at the price of £—— [at a valuon to be made by a valuer apptd by my trees], such option to be declared in writg by my eldest son within six calr months after my death & by each of my other sons within one calr month after the expiron of the period allowed to the son next precedg him in seniority, but so that my trees shl have power to extend

(c) The cases as to the presumption that a woman will have no child are collected, 46 Sol. J. 711. The presumption is the same for widows as for spinsters: *Re White*, [1901] 1 Ch. 570; see Seton, Ch. XLIV., s. 27, and notes, as to the cases in which the Courts will act in liberating a fund upon the presumption. In determining rights at law as distinct from merely administering a fund, the Court cannot inquire into the capacity of a woman to bear children: *Re Deloitte*, [1926] Ch. 56.

Option to
purchase.

(d) As to this clause, see 4 Dav. Prec., 3rd ed., 260, note; and *Re Barnes*, [1883] W. N. 131. As to whether an option to purchase is to be construed as merely personal to the donee of such option, or as an interest transmissible to his executors, see *Re Cousins*, 30 Ch. D. 203, and compare *Belshaw v. Rollins*, [1904] 1 Ir. R. 284. Where the option is to purchase at a fixed price, the conveyance must be made free from incumbrances: *Re Wilson*, [1908] 1 Ch. 839. An option to purchase land which is created by will is not an estate contract within s. 10 (1), Class C. (iv) of the L. C. Act, 1925, but may be registered as a general equitable charge under Class C. (iii) of that Act. As to the liability of a general equitable charge to be over-ridden by a sale by the estate owner, see *ante*, p. 215, note (d).

the time so allowed to each or any of my sd sons if they shl think it reasble, & I direct my trees on paymt of the pchase-moy for the same to assure the sd ppty to the son pchasg the same or as he shl direct.

(ii.) After the sd ppty shl have been so assured no pson claiming under such son shl be in any mner affected by any irregularity or want of compliance with the provons hrinbfe contd resptg such successive options as afsd.

14. My sd son A., notwithstdg his being a tree of this my will, may pchase any pt or pts of my real or psonal este hrinbfe devised & bequeathed in trust as afsd at any sale or sales throf by public auction or by private contract, provd in the latter case that the sale shl be conducted by the trees or tree of my will, other than the sd A., or be made at a price fixed by a valuer appted by such other trees or tree.

Power to son who is a trustee to purchase real or personal estate (e).

MAINTENANCE, ADVANCEMENT, &c. (a).

1. MY TREES shl, after the death, of *the tenant for life* or after the death or remarre of my wife, apply the whole or such pt as they in their discron shl think fit, of the income of the expectant or presumptive share or shares of any child or chln (grandchild or grandchln] of mine [of the sd —] in the trust fund under the trusts hrinbfe contd for or towards his or her maintee, educon, or benefit (c), or for or towards the common maintee, educon, or benefit of the chln [grandchln] for the time being entitled expectantly or presumptively under such trusts, & may either themselves so apply the same, or may pay the same to the [parent or] guardians or guardian of such child or chln [grandchild or grandchln] for the ppose

Maintenance and accumulation for children or grand-children where income applicable as a common fund (b).

(e) As to the general rule that a trustee for sale may not purchase the trust property, see Vol I., p. 568, note (c).

(a) As to the statutory powers of maintenance and advancement, see ante, pp. 526, 529.

(b) The clause in the text differs from the provisions of s. 31 of the T. Act, 1925, in that it is imperative and not merely a power, and also in that the children and grandchildren are to be maintained as a class.

(c) Where circumstances require it, add the words, "whether there is any other fund applicable or any pson bound by law to provide for such mtee or educon or not."

afsd witht seeing to the applicon throf, and shl accumulate the residue of the income of the trust fund & hold such accumulations & the resultg income throf for the pson or psons who shl eventually become entitled to the ppal fund from wch the same shl have pceeded, with power at their diseron to apply the sd accumulons or any pt throf durg the infancy of any child or chln, grandchild or grandchln, for the time being the objects of the trust for maintee and educon hrinbfe contd as if the same were income arisg in the then current year.

Mainten-
ance and
accumu-
lation.
General
form (d).

2. MY TREES may apply the whole or any pt at their diseron of any income, to wch any pson being a minor & if female also a spinster shl, or if of full age being a male or of full age or married being a female wd for the time being be entitled in posson under any of the trusts or disposons hrin contained, for or towards his or her maintee, educon, or benefit, & may either themselves so apply the same, or may pay the same to the parent or guardians or guardian of such pson for the ppose afsd, witht seeing to the applicon throf: AND SHL, durg such minority, or minority & spinsterhood, as the case may be, accumulate the surplus (if any) of the same income, &c., *continue accumulation clause as at p. 528, f. 20, saying, "of any such minor as afsd," instead of "of the child for the time being, &c."*

Mainten-
ance and
accumu-
lation.
Short
form.

3. MY TREES may at their diseron apply all or any pt of the income of the share to wch any minor shl be entitled in expectancy, & wd if of full age be entitled in posson under the trusts hrinbfe contd for his or her maintee, educon, or benefit in such mnner as they may think fit, & shl invest the surplus income (if any) & the resulting income throf in any investmts hby authorised in augmenton of the capl of such share.

Advance-
ment (e).

4. MY TREES may after the death [or future marre] of my wife [after the death of the sd, *tenant or tenants for life*], or previously thereto with her [his, or, "their respective"] consent in writg, raise any pt or pts not exceedg in the whole [a moiety] of the then expectant, presumptive or vested share of any child [or grandchild] of mine [of the sd —]

For
children
or grand-
children

(d) This form may be used whenever, as in case of property abroad, it is desired not to rely on the statutory provisions.

(e) When an express power of maintenance is inserted it will generally be desirable to insert an express power of advancement.

in the trust fund (a) under the trusts hereinbefore continued, & may pay or apply the same for the advancement or benefit of such child [or grandchild] in such manner as my trustees shall think fit (b).

5. MY TRUSTEES may raise any part or parts not exceeding in the whole [a moiety] of the capital of any share, portion, or legacy, to which any person being a minor & if female also a spinster shall, or if of full age being a male or if of full age or married being a female widow for the time being be entitled [whether absolutely, or for a life, or other limited interest only, &] whether in possession or in reversion or expectancy, under this my will or any codicil hereto, & may pay or apply the same for his or her advancement or benefit, as my trustees shall think fit: Provided that no such advancement shall be made during the existence of any prior life or other actually subsisting interest or interests (whether vested or contingent) in the premises out of which the advancement is to be made without the consent in writing of the person or persons entitled thereto.

6. DURING THE suspension of absolute vesting of the share, or, "portion," or, "legacy," to which any child, or "person," shall for the time being be entitled in expectancy under the trusts [lastly] hereinbefore continued & to which such child, or, "person," if of full age or if a female married widow be absolutely entitled in possession, my trustees shall accumulate the annual income of such share, or, "portion," or, "legacy," at compound interest by investing the same

of testator or another person.

Thesame. General form.

Accumulation, where maintenance not intended (c).

(a) Or say, "the expectant, presumptive, or vested legacy or share, &c.," as the case may be.

(b) If the daughters' shares are settled the following words may be added, "& so that this present power may be exercised to the extent aforesaid over the capital of any share or shares in which any daughter of mine shall be entitled to a life interest only."

Variation for settled shares.

If the trust property includes land held in trust for sale the trustees will have power to raise the money by mortgage, T. Act, 1925, s. 16. As to bringing interest on advancements into account on the distribution of the fund, see *Re Dallmeyer*, [1896] 1 Ch. 372; *Re Lambert*, [1897] 2 Ch. 169; *Re Davy*, [1908] 1 Ch. 61; and see *ante*, p. 807. In a proper case an advancement may be made for the purpose of paying legacy duty: *Klug v. Klug*, [1918] 2 Ch. 67.

(c) Such absolute trusts for accumulation are not favoured by the Court, which has overridden such a trust by allowing a proper sum for maintenance: *Re Collins*, 32 Ch. D. 229; *Re Walker*, [1901] 1 Ch. 879; and see *Re Thatcher*, 26 Ch. D. 426.

& the resultg income throf in any investmts hby authorised in augmenton & so as to follow the destinon of the capl of such share, or, "portion," or, "legacy."

Power to provide and keep up house for infants.

7. MY TREES may at their discron apply all or any pt of the income applicable under this my will for the maintee or eduecon of my infant child or chln for the time being, in or towards providg a suitable residee & keepg up an establishmt for such child or chln or any of them, & for that ppose may take on lease or from yr to yr any pper dwelling-house or may use any house belonging to me & the furniture & househd & domestic effects thrin, & may defray all expses connected therewith or with the establishmt to be kept up thrin, & may also at their discron permit any adult child or chln of mine to share the benefit of such residee & establishmt either with or witht contributg towards the expses throf & upon such terms as to the contribon (if any) to be made by such adult child or chln & in all other respects as my trees may think fit.

Thesame, with power to purchase furniture and to permit testator's sister to reside with infants.

8. (i.) MY TREES may at any time at their discron take on lease or rent a house in such place as they shl think fit as a residee for my chln or any of them until my youngest child for the time being shl attain the age of twenty-one yrs or marry or for any less period, & may retain & use all or any pt of my furniture & househd & domestic effects for the ppose of furnishg such house & also may pchase any furniture or effects for such ppose, & such pchased furniture & effects shl subjt to such user throf be held as pt of my residuary este.

(ii.) My trees shl pay the rent, rates, & taxes & expses of insurce & repairs payable in respt of such house & any other costs incidental to the takg & furnishg of the same out of the income or capl of my genl psonal este, with power to retain a fund for that ppose & for the paymt of the annual sum payable to such of my sisters as may reside with my chln as hrinar mentd, Provd that the fund so retained & the income throf shl subjt to & after satisfying the pposes last afsd form pt of my residuary este.

(iii.) My trees shl permit all or any of my chln & one of my sisters to occupy & use such house, furniture & effects durg the period afsd, & shl pay the sum of £—— per annum out of my genl psonal este by half-yrly paymts to such one of

my sd sisters as shl reside with my chln as afsd, or a proportionate amt for any pt of a yr durg wch she may so reside.

(iv.) If any question shl arise as to wch of my sisters shl reside with my sd chln as afsd, such question shl be decided by a majority of my trees.

INVESTMENT CLAUSES.

1. TRUST MOYS may be invested in or upon, &c., *continue investmts*, pp. 537 *et seq* (a).

2. TRUST MOYS may be invested in the pchase of any perpetual rent-charges or fee-farm rents secd upon or issuing or arising out of freehd ppty in England or Wales but not in Ireland, provd that the rent-charges or rents so pchased shl not exceed one eql third pt of the annual rack rent value at the time of pchase of the ppty upon wch the same shl be secd.¹

Authorised invest-ments.
Power to invest in rent-charges, &c.

3. (i.) TRUST MOYS may be invested, &c., *continue as at* p. 543, f. 9 (i.).

(ii.) All such ppty shl be assured to my trees, accordg to the tenure throf, or, "for the este pchased by them thrin resply" (c), Upon the trusts & with & subjt to the powers & provons upon, with & subjt to wch the same wd thenceforth be held if the same had been comprised in the general devise and bequest in trust for conversion hrinbfe contd.

Power to purchase land (b).

4. (i.) TRUST MOYS may at the request of my wife be laid

Power to purchase

(a) If desired, add to the investment clause, "or in or upon any stks, funds, shares, or secs of a description similar to those in wch any pt of my psonal este may be invested at my death."

(b) See L. P. Act, 1925, s. 32. For the powers of management given by statute to trustees for sale, see L. P. Act, 1925, s. 28, as amended by the L. P. (Amendment) Act, 1926, and *ante*, p. 546.

(c) If the trusts of the fund to be invested in land are declared separately from those of the residue, *continue*:—"Upon the same trusts & with & subjt to the same powers & provons as are hrinbfe declared & contd concerng, the sd sum of £——, & the investmts for the time being representg the same." It is unnecessary to insert a trust for sale, having regard to s. 32 of the L. P. Act, 1925.

residence
for wife.

out, &c., *continue as at p. 544, f. 11 (i.), saying* "as a residence for my wife."

(ii.) Such messe & premes shl be assured to my trees, accordg to the tenure throf, *or*, "for the este pchased by them thrin resply" (d), Upon the trusts, &c., *as in last form.*

Power to
purchase
furniture
for wife.

5. TRUST MOYS may at the request of my wife be laid out to an amt not exceedg £—— in the pchase of furniture to be held, used, & enjoyed by my wife durg her life, she keepg the same insured against fire & in good repair & preservon reasble wear & tear excepted, & after her death to fall into my residuary este. *Provision as to inventory (e) as at p. 545, f. 3.*

Power to
lend trust
funds to
son for
business
purposes.

6. TRUST MOYS may at any time be lent to the sd —— for the pposes of the sd business to an amt not exceedg in the whole the sum of £—— for such period, at such rate of intt (not being less than —— p.c. p.a.) & upon such terms as my trees may think fit witht being in any circes liable for the loss of any moys so advanced or the intt thron. [*If —— is a tree add, PROVd that my trees other than the sd —— may call in & compel paymt of the sd loan as & when the same shl become payable, but shl not be in anywise responsible for loss occasioned by any omission or neglect so to do.*]

Power to
lend trust
funds to
firm (f).

7. TRUST MOYS may at any time be lent to the psons who shl at my death be the ptnrs in the firm of ——, so long as they or any of them [either alone or in ptnp with any other psons or pson] shl carry on the business wch shl at my death be carried on by the sd firm in accordance with the articles of ptnp dated the —— day of —— under wch the business of the sd firm is now carried on to an amt not exceedg, &c., *as in last form.*

(d) See the variation to the last form for the case where the fund out of which the purchase is made is settled upon different trusts from those of the residue.

(e) For a fuller form see *ante*, p. 545, f. 12:

(f) A power to lend trust moneys to a firm consisting of certain individuals does not authorise a loan to a firm differently constituted: *Smith v. Patrick*, [1901] A. C. 282:

POWERS TO TRUSTEES (a).

1. (i.) MY TREES shl in addition to the powers conferred on trees for sale by the L. P. Act, 1925, have power to manage, stock & cultivate any farm or farms or woodland for the time being vested in them on the trusts of this my will & to employ & expend such pt of the capl or income of my residuary este as they shl think fit for that ppose or for paying compenson to outgoing tenants, with power also to hire & engage bailiffs, agents (c), labourers, & workmen, & to employ the existg live & dead stk (if any) & to buy & sell live & dead stk & genlly to act in all matters relatg to any such farm or farms as if they were absolute owners throf.

Power to carry on and stock farms (b).

(ii.) My trees shl be free from all responsibility & be fully indemnified out of my residuary este in respt of any loss arisg in the exercise of this psnt power.

2. (i.) MY EXORS may during the first yr after my death or during such longer period as they may continue in posson throf keep up the gardens & pleasure-grounds belongg to my mansion house at —, & also may stock, improve (d), manage, & cultivate any farm, farms, or woodland wch may be in hand at my death, & for that ppose may employ any pt of my residuary este, with power to delegate all or any of such powers to any pson or psons when & upon such terms as they may think fit wtht being responsible for loss.

Power to executors where lands are specifically devised or settled to keep up gardens, stock farms, &c. (e).

(a) See *ante*, p. 546, note. The powers conferred by the T. Act, 1925, on trustees apply also to personal representatives where the context so admits: T. Act, 1925, s. 68 (17).

(b) The power in the text is wider than the power conferred on trustees for sale by L. P. Act, 1925, s. 28, and S. L. Act, 1925, s. 102. Trustees may raise the necessary capital by sale or mortgage: T. Act, 1925, s. 16. Personal representatives may raise capital by limiting a term and may grant rentcharges to meet annual or periodical sums: A. E. Act, 1925, s. 40. In the case of trustees for sale the statutory power applies notwithstanding any direction to the contrary. For other powers additional to those conferred by statute, see *ante*, pp. 677 *et seq.*

Power of trustees for sale and personal representatives to raise money.

(c) Trustees and personal representatives have a statutory power to appoint agents for administering the trust estate and are not by reason only of having appointed such agents themselves responsible for any loss arising thereby: T. Act, 1925, s. 23 (2).

(d) As to what are improvements apart from those authorised by the S. L. Act, see *Re Stamford and Warrington (Earl)*, [1916] 1 Ch. 404. A list of improvements within the meaning of the S. L. Act, 1925, is contained in the Third Schedule of that Act.

(e) See note (c), *sup.*

(ii.) All moys so expended, after deductg the receipts (if any), shl be charged on my real este [devised to —, or “in strict settlemt”] with intt thron until paymt at the rate of £4 p.c. p.a. payable half-yrly in favour of my residuary este.

(iii.) The plants, horticultural instrumts, live and dead stock, & crops wch shl at the expiron of one yr from my death or of such longer period as afsd be in or about or employed in connection with the sd gardens, pleasure-grounds, farm, farms, or woodland shl become the ppty of the pson who at such expiron shl be entitled to the posson or the receipt of the rents & profits of my real este [devised, &c., as above].

(iv.) My exors shl be free from all responsibility & be fully indemnified out of my residuary este in respt of any loss arisg in the exercise of this psnt power, & may determine what pt of the produce & moys arisg from the keeping up of the sd premes shl be treated & applied as capl & what pt as income, & such determinon shl be conclusive.

Power to postpone conversion of real and personal estate (f).

3. MY TREES may in their discron postpone the sale, callg in & conversion of the whole or any pt or pts of my residuary este (including reversions & ppty of a determinable, wasting or hazardous nature) durg such period as they shl think pper, & may retain any investmts existg at my death witht being responsible for loss [& they shl not sell any pt throf durg the life of my wife witht her consent in writg (g)].

Declaration as to income of real and personal estate

4. ALL THE net rents, profits & income arisg from my residuary este until the sale, callg in & conversion throf, in whatsr condon or state of investmt the same may be & whether consistg of investmts of an authorised character or not (includg leasehds or other ppty of a terminable or wastg nature) shl for

(f) The statutory power of postponement of a sale conferred on trustees for sale by s. 25 of the L. P. Act, 1925, only applies to sales of land. In the case of an intestacy the administrator has power to postpone the sale of any part of the estate real or personal so long as he thinks proper: A. E. Act, 1925, s. 33; but if it is desired that trustees of a mixed residuary estate, not arising under an intestacy, should have a similar power it must be expressly conferred on them. The power to postpone conversion and the declaration as to income until conversion may be incorporated in the trust for conversion, as at p. 785, f. 1; and see notes to that form. Some of the forms in SETTLEMENTS, ante, pp. 577 *et seq.*, are applicable to wills and can be inserted, if required, *mutatis mutandis*.

(g) See s. 26 of the L. P. Act, 1925, as amended by the Schedule of the L. P. (Amendment) Act, 1926.

all the purposes of this my will & as betw all persons interested hereunder be applied from my death as if the same were income (i) arising from the proceeds of such sale, call in, or conversion, or the investments of such proceeds, no part thereof being liable to be retained as capital, but no reversion or other property not actually producing income shall be treated as producing income for the purposes of this my will.

until conversion (h).

5. MY TREES may in extension of the power of appropriation conferred on personal representatives by s. 41 of the A. E. Act, 1925, at any time or times at their discretion appropriate any part of my residuary estate in its then actual condition or state of investment in or towards satisfaction of any legacy or any share in my residuary estate without the necessity of obtaining the consent of any persons or person whose consent is required to the exercise by personal representatives of the power of appropriation conferred by that section.

Power to appropriate specific property in satisfaction of legacy or share of residue (a).

(h) The rule in *Allhusen v. Whittell* (see *ante*, p. 787, note (f)) is not displaced by this clause: *Re Wills*, [1915] 1 Ch. 769. Under a trust for sale, which is properly postponed, the person entitled to the income of the proceeds of sale is entitled to the rents and profits until sale: see L. P. Act, 1925, s. 28 (2), and cf. *Re Searle*, [1900] 2 Ch. 829; *Re Oliver*, [1908] 2 Ch. 74. See *ante*, p. 788, note.

(i) The Apportionment Act, 1870, is not excluded by a power to postpone sale, coupled with a direction that pending sale the whole of the income shall be applied as income: *Re Edwards*, [1918] 1 Ch. 142.

(a) The A. E. Act, 1925, s. 41, gives the personal representative power with the prescribed consents to appropriate any part of the real or personal estate of the deceased in or towards satisfaction of any legacy or share in the property of the deceased, whether settled or not, and provides (sub-s. 4) that an appropriation made pursuant to the section shall be binding on the other beneficiaries. The power operates without prejudice to any other power of appropriation conferred by law or by the will of the deceased, and is to take effect with any extended powers conferred by the will. Independently of any express or statutory power, executors or trustees may agree with any legatee capable of making a bargain or giving a receipt to appropriate a specific portion of the estate (including chattels real) to him: *Re Lepine*, [1892] 1 Ch. 210; *Re Richardson*, [1896] 1 Ch. 512; *Re Salaman*, [1907] 2 Ch. 46; but prior to 1926, an appropriation if not expressly authorised by the will could not have been made in or towards satisfaction of a settled legacy unless the property appropriated was an investment authorised by the will or settlement. Property duly appropriated under the statutory power is thereafter to be treated as an authorised investment: *Re Wragg*, [1919] 2 Ch. 58. The value of appropriated securities should be the value as at the date of appropriation: *Re Charteris*, [1917] 2 Ch. 379, 386; but s. 41 (3) of the A. E. Act, 1925, enables the personal representative to ascertain and fix the value of the respective parts of the real and personal estate as they may think fit. There is no apportionment of the dividends of the appropriated property: *Re Clarke*, 18 Ch. D. 160. As to appropriation

Appropriation.

Power to
pay out-
goings
out of
capital.

6. MY TREES may at their discreon pay out of capl any outgoings in respt of my L—— Este wch shl in their opinion be of an unusual character or wch though of a usual character shl in their opinion in any one yr exceed the amt usually payable during a yr, to be raised by the sale (wch my trees are hby authorised to make) of a sufft pt of my residuary este, or “by mtge of my L. Este & the sinking fund pols hby devised & bequeathed resply.”

Power to
postpone
calling in
of debt
(b).

7. MY EXORS may postpone the calling in of the sum of £—— now owing to me from the sd —— for wch I hold his promissory note, or of any other debt wch may be owing to me from the sd —— at my death for such period as my exors may think pper, witht taking seey for the same & witht being responsible for loss.

Power to
purchase
annuity
for tenant
for life(c).

8. NOTWITHSTDG ANYTHING hrinbfe contd my trees may at any time at their discreon, with the consent of the sd A., sell & dispose of all or any pt of the share of the sd A. in the trust fund, or as the case may be, & apply the proceeds throf in the pchase in their names from the Governmt or any public Co of an annuity not exceeding £——, for the life of the sd A., & such annuity or annuities shl be pd to him in the same mner as is hrinbfe directed with respt to the income of the sd share wch shl have been so applied in the pchase throf.

Power to
settle

9. MY TREES may determine what articles pass under any

in respect of future and contingent legacies, see *Re Hall*, [1903] 2 Ch. at p. 233, discussed 50 Sol. J. 417 and sub-s. (5).

Stamp.

Where an appropriation is made under an express power, no *ad valorem* stamp duty is payable on conveyance or transfer of the appropriated property; and where it is made under the statutory power, it seems clear that *ad valorem* duty will not be payable where the appropriation forms part of a transaction which amounts in substance to a division of assets *in specie* within s. 73 of the Stamp Act, 1891, rather than a sale. Where, however, the appropriation was not made pursuant to an express power, and did not form part of such a transaction, *ad valorem* duty was held to be payable: *Dawson v. I. R. Commrs.*, [1905] Ir. R. 69.

For a form of conveyance to give effect to an appropriation, see Vol. I. p. 1070.

(b) It is primarily the duty of executors and trustees promptly to call in all sums due to the estate: *Re Brogden*, 38 Ch. D. 546; but this rule is modified by s. 15 of the T. Act, 1925; see *Re Owens*, 47 L. T. 61.

(c) This provision is intended for a case in which the income of a settled fund may be inadequate for the maintenance of the tenant for life and his family.

specific bequest contd in this my will, or any codl hto, & [subjt to the provons hrinbfe contd] whether any moys are to be considered as capl or income, & whether any expses, outgoings, or other paymts ought to be pd out of capl or income, & may apportion blended trust funds & determine all questions & matters of doubt (b) arisg in the execution of the trusts of this my will or any codl hto : And every such determinon, whether made upon a question actually raised or implied in the acts or proceedings of my trees, shl be conclusive, & binding on all psons claiming hrunder.

10. [The said — or] any exor or tree &c., *continue as* at p. 580, f. 6 saying, if this is intended, instead of “to charge & be pd” “to charge retain & be pd in priority to all other bequests hby made” (d).

11. ANY OF my trees may agree with my other trees or tree for the time being to receive in respt of all or any pt of the business of the trust in lieu of the ordinary professional charges a salary of such amt & during such period as such other trees or tree shl think fit.

12. MY TREES may retain out of the annual income of the trust fund [my residuary este] in every yr the followg annuities for their own use & benefit, namely, an annuity of £—— for each of my trees while acting in the trusts of this my will to be pd to him half-yrly by way of remuneron for his services [in addition to any paymts for professional services], the first of such paymts to be made at the expiron of six calr months from my death. Provd that durg such time (if any)

questions
(a)
and ap-
portion
blended
funds.

Power to
charge for
profes-
sional
business
(c).

Provision
enabling
profes-
sional
trustee to
be paid
by a
salary (e).

Trustees
to retain
annuity
as remu-
neration
(f).

(a) See *ante*, p. 579, note (g).

(b) A declaration that attempts to oust the jurisdiction of the Court is inoperative: *Re Raven*, [1915] 1 Ch. 673.

(c) See *New v. Jones*, 1 Mac. & G. 668, note; *Re White*, [1898] 2 Ch. 217. The power to an executor or trustee to charge makes him a legatee: *Re White*, *sup.*; and his charges are a legacy liable to abatement where the assets are insufficient for payment of legacies in full: *Re Brown*, [1918] W. N. 118.

(d) See *Re Brown*, [1918] W. N. 118.

(e) The gift of the salary is a legacy: *Re Salmen*, 107 L. T. 108. As to remuneration to a trustee appointed receiver and manager by the Court, see *Re Bignell*, [1892] 1 Ch. 59.

(f) Upon the death of a trustee neither succession nor estate duty becomes payable under this provision: *Att.-Gen. v. Eyles*, [1909] 1 K. B. 723.

as the number of my trees shl be more than —, such annuities shl not be payable.

Provision preventing extinction of debt of executor or trustee to testator (g).

13. MY EXORS & trees other than the sd A. shl be deemed to be my exors & trees in respt of any moys wch may be owing by the sd A. to me or my este at my death & the intt thron, & shl alone be entitled to recover & receive such moys & intt & to give a good discharge for the same, but the same when reced shl be held & dealt with as pt of my general este.

Power to majority of trustees to act (h).

14. (i.) ANY OF the powers & authorities hby given to or vested in my trees may at any time be exercised by a majority of my trees witht the concurrence or with merely the formal concurrence of any tree who by reason of illness, infirmity, or temporary absence abroad may be unable or unable witht inconvenience to take an active pt thrin, & such a tree may in order to facilitate business by power of atty or orwise empower any of the other trees to use his or her name for execution or signature of documts for any of the purposes of this my will witht being responsible for loss, & all acts & proceedings of the majority of my trees shl in such case be as valid & effectual as if they had all concurred thrin.

(ii.) Any tree who shl dissent from any exercise of any of such powers or authorities shl nevertheless concur in executg or signing any documt or doing any act neey for giving effect to the exercise of any of such powers or authorities by the majority of my trees, witht being responsible for loss.

Power to trustees to act although personally interested (i).

15. MY TREES may exercise or concur in exercisg all powers & discrns hby or by law given to them, notwithstdg that they or any of them may have a direct or other psonal intt in the mode or result of exercisg any such power or discron [but any of my trees may nevertheless abstain from actg

(g) See *ante*, p. 732, note (a).

(h) In the absence of express provision, a majority of the trustees cannot bind the minority: *Re Roth*, 74 L. T. 50; unless the trust is of a public (*Wilkinson v. Malin*, 2 Tyrw. 544) or charitable (*Re Whiteley*, [1910] 1 Ch. 600) nature. Notwithstanding this power there must be at least two trustees to give receipts to purchasers of land: T. Act, 1925, s. 14.

(i) See T. Act, 1925, s. 68 (17), where the expressions "trust" and "trustee" are defined to extend to cases where the trustee has a beneficial interest in the trust property. Cf. *Re Sykes*, [1909] 2 Ch. at pp. 247, 250.

except as a merely formal party in any matter in wch he may be so psonally interested, & may allow his co-trees or co-tree to act alone in the exercise of the powers & discrns afsd in relation to such matter].

16. *Indemnity against acts of Public Tree, as at p. 582, f. 9, mutatis mutandis.*

DEVICES IN STRICT SETTLEMENT (a).

1. I DEVISE, *freehd parcels*, see p. 736, f. 1 (all of wch freehd ppty is hrinar called the settled land) to my trees (b) upon the trusts, & with & subjt to the powers & provons hrinar delcared concerng the same, that is to say, UPON TRUST, &c. Com-
mence-
ment—
settled
freeholds.

2. I DEVISE & beqth all my freehd & leasehd ppty in the counties of —, &c., & elsewhere in England & Wales (c), includg all entailed ppty of wch I have power to dispose by will (all hrinar referred to as the settled land, or “the — Estes” to my trees (b), Upon the trusts, & with & subjt, &c., as in f. 1. Settled
land in-
cluding
lease-
holds.

3. UPON SUCH TRUSTS, [or, “In trust for such psons or pson, for such estes or este, intts or intt,”] & subjt to such powers & provons as — shl from time to time by any deed or deeds, revocable or irrevocable, or by will or codl appt, AND IN DEFAULT of & subjt to any such apptmt, &c. General
power of
appoint-
ment.

4. UPON SUCH TRUSTS, &c., as in f. 3, as — & — shl from time to time by any deed or deeds, revocable or irrevocable, jointly appt, AND IN DEFAULT of & subjt to any such apptmt, &c. The same
to two
persons
jointly
(d).

(a) Most of the clauses in SETTLEMENTS (REAL) can be readily adapted to wills in strict settlement, with the necessary modifications in the commencement of the clauses and a few other obvious alterations.

Where the settlement is created by the will of a sole registered proprietor, it is the duty of the trustees to give notice of the proposed restrictions to such of the beneficiaries as the registrar may direct: L. R. Rule 57. Regis-
tered
land.

(b) Where in the earlier part of the will, debts, legacies or annuities have been made a charge upon the settled property, say “subjt & charged as afsd.” The practice of limiting terms of years for securing charges is here discontinued for the reason that terms so limited cannot take effect as legal terms and do not therefore afford any additional security. See, further, *ante*, p. 646, note.

(c) For a devise and bequest of property abroad in trust for sale and conversion and settlement of the net proceeds on trusts corresponding to the trusts of the settled land, see *post*, p. 850, f. 42.

(d) For a power to two persons or the survivor, see *ante*, p. 796, f. 2.

The same to married woman, restricted (e).

Charge of portions for younger children (f).

Limitation of a life interest.

The same to woman without anticipation.

Life interest determinable on bankruptcy, &c. (h).

Life interests to be without impeachment of waste.

Limitation of rent-charge for life.

5. UPON SUCH TRUSTS, &c., as in f. 3, as — the wife of — shl while discovert by any deed or deeds revocable or irrevocable, or whether covert or discovert by will or codl, appt, AND IN DEFAULT of & subjt to any such apptmt, &c.

6. UPON TRUST that my trees shl receive for or on account of portions for my younger chln or younger child as hrinar defined the capital & annual sums hrinar mentd to be resply charged upon & issuing out of the settled land & to be held by my trees as & when received by them upon the trusts & subjt to the powers & provons hrinar declared for the advancemt & maintee of such younger chln or child, And subjt & charged as afsd.

7. IN TRUST for — & his assns durg his life [witht impeachmt of waste (g)], with remr, &c.

8. IN TRUST for the sd, —, & her assns durg her life [witht impeachmt of waste (g)] & so that durg coverture the same shl be witht power of anticipon, with remr, &c.

9. AND IF at my death [or, if the life este is in remr, “at the time of this psnt trust takg effect in posson”] no act or event shl have been done or happened [whether bfe or after my death,] whereby the life intt hby given to the sd A., &c., continue as at p. 657, f. 4.

10. EVERY LIFE INTT hrinbfe limited shl be witht impeachmt of waste.

11. UPON TRUST that —, & his assns, shl durg his life receive a yrly rent-charge of £—, witht any deduction except for death duties (i), commencg from my death [from the death of the sd —], to be charged upon & issuing out of the settled land, & to be considered as accruing from day to day, but to be payable by eql qtrly paymts, the first of such paymts to be made at the expiron of three calr months fröm my death [from the death of the sd —]. And subjt & charged as afsd.

(e) The object of this form, of course, is to preclude a binding appointment being made in favour of a husband; see *ante*, p. 531, note (g).

(f) As to the omission of terms for securing charges, see *ante*, p. 646, note, and p. 837, note (b).

(g) See *ante*, p. 656, note (a). Add here, if so required, “he [she] keepg the mansion-house at — in tenantable repair.”

Life estate determinable on bankruptcy, &c.

(h) For a discretionary trust for application of income by the trustees for the benefit of a person and his family during the life of such person or for the remainder of his life after the determination of a life interest determinable on his bankruptcy, etc., see *ante*, p. 657, f. 5. This form may readily be adapted to the case of a will.

(i) As to these words, see *ante*, p. 659, note (b).

12. UPON TRUST that — & her assns shl durg her life [widowhood] receive a yearly rent-charge of £ — witht any deduction, except for death duties [witht power of anticipon durg coverture], commencg, &c., *as in last form*.

13. IN TRUST for the first & every other son [daur] of the sd — successively in remr one after the other, accordg to their respective seniorities in tail [male], with remr, &c.

14. PROVD ALWAYS & I declare that if any pson in trust for whom an intt in tail [male] by pchase in the settled land is hrinbfe limited is born in my lifetime (b), such entailed intt shl not take effect: AND IN LIEU throf I direct that the settled land shl be held IN TRUST for such pson, & his or her assns, durg his or her life [witht impeachmt of waste], with remr IN TRUST for the first & every other son of such pson, sevilly & successively accordg to seniority of birth in tail [male] [with remr to the use of daughters in tail, f. 13].

15. PROVD ALWAYS & I declare that if any pson in trust for whom intts in tail male & also in tail general by pchase in the settled land are hrinbfe limited, is born in my lifetime, such respective entailed intts shl not take effect: AND IN LIEU of such intt in tail male, I direct that the settled land shl be held IN TRUST for such pson, & his or her assns, durg his or her life [witht impeachmt of waste], with remr IN TRUST for the first & every other son of such pson, &c., *in tail male*, f. 13: AND IN LIEU of such intt in tail general, I direct that the settled land shl be held IN TRUST for the first & every other son of such pson successively, &c., *in tail general*, f. 13, with remr IN TRUST for the first & every other daur of such pson successively, &c., *in tail male*, f. 13, with remr, *to daughters successively in tail general*, f. 13.

16. IN TRUST for all the daurs of the sd — in eql shares as tenants in common in tail [male] with cross remrs betn such daurs as to their origl & accruing shares as tenants in common in tail [male], & if there shl be but one such daur then as to the

The same to a woman for life or widowhood.

Limitation to sons or daughters of tenant for life successively in tail (a).

Proviso cutting down interests in tail by purchase of persons born in testator's lifetime.

The same where interests in tail male and in tail general are limited to the same persons (c).

Limitation to daughters of tenant for life as

(a) This limitation would include any child dying in the testator's lifetime leaving issue inheritable under the entail, the gift being saved from lapse by section 32 of the Wills Act, 1837, whether the child is a descendant of the testator or not.

(b) This does not include a person *en ventre sa mère* at the testator's death, since such a construction would not be for the benefit of that person: see *Villar v. Gilbey*, [1907] A. C. 139.

(c) The case where daughters take estates in tail general only can be provided for by a modification of f. 14.

tenants in common in tail general, or tail male, with cross remainders.

Inclusion of daughters dying in testator's lifetime in limitation to daughters in tail (d).

Limitations in tail general by reference to limitations in tail male. Limitations in remainder by reference.

Limitations in strict settlement to testator's sons and their issue male (a).

entirety of the settled land IN TRUST for such one daur in tail [male] with remr, &c.

17. PROVD ALWAYS that if any daur of the sd — shl have died in my lifetime, & any of her issue [male] shl survive me, the limitation to the daurs of the sd — hrinbfe contd shl take effect in the same mner as if such daur had died immedly after me, & so that the pson [or psons] who shl at the time of my death answer the description of the heir male [hrs] of the body of such daur shl take the share or shares or intt origl or accruing in the settled land wch such daur wd have taken had she survived me, & with the like remrs over on failure of her issue [male].

18. UPON TRUST that all & every the psons or pson, to whom estes in tail male by pchase are hrinbfe limited, may sevlly & successively take estes in tail general in remr one after the other in the same order & priority in wch they resply take estes in tail male, with remr, &c.

19. IN TRUST for every son & daur born in my lifetime of the sd —, & the issue of each such son & daur, for the same intts & in the same order & mner as the settled land is hrinbfe limited to every son & daur of mine, & his & her respective issue, with remr IN TRUST for every son & daur born after my death of the sd —, & the issue of each such son & daur, for the same intts & in the same order & mner as the settled land is hrinbfe limited in trust for every son & daur born after my death of every son & daur of mine, with remr IN TRUST for — & his issue for the same intts & in the same order & mner as the settled land is hrinbfe limited to the sd — & his issue, with remr, &c.

20. IN TRUST for my eldest son A., durg his life, [without impeachment of waste] with remr IN TRUST for his first & every other son born in my lifetime sevlly & successively accordg to seniority durg their respective lives, with an immediate remr after the death of each such grandson of mine IN TRUST for

(d) The issue inheritable under the entail of a daughter dying in the testator's lifetime would be excluded by the last clause, the gift being to a class; but the addition of this proviso seems sufficient to include a daughter so dying, even before the date of the will, having regard to the Wills Act, 1837, s. 32.

(a) For an instance of limitations to the second and other sons, excluding the eldest son, see *Locke v. Dunlop*, 39 Ch. D. 387. As to the meaning of eldest son, see Norton on Deeds, 429; *Law Union, &c. v. Hill*, [1902] A. C. 263; *Re Wrottesley*, [1911] 1 Ch. 708; *Re Cavendish*, 56 Sol. J. 344.

his first & every other son sevlly & successively accordg to seniority in tail male, with remr after the death of all such sons of the sd A. & the default or failure of such issue male as afsd of all such sons IN TRUST for the sons of the sd A. born after my death sevlly & successively accordg to seniority in tail male, with remr UPON TRUST that my sons B., C., & D., & every son of mine hrafter born, & their respective sons & grandsons, shl take intts similar to & with the same order & priority as those hrinbfe limited in trust for the sd A., his sons & grandsons, but so that the elder of such sons of mine & his sons & grandsons shl always be preferred to the younger of such sons of mine, & his sons & grandsons, in the same mner as if the trust hrinbfe declared in favour of the sd A., his sons & grandsons, were repeated with the substiton of the name of each of my sd sons in succession accordg to seniority, for the name of the sd A., with remr, &c.

21. UPON TRUST that all my daurs & their respective sons [& grandsons] shl take intts similar to & with the same order & priority as those hrinbfe limited in trust for my sd son A., his sons [& grandsons], but so that the elder of such daurs of mine, & her sons [& grandsons] shl always be preferred to the younger of such daurs of mine, & her sons [& grandsons], in the same mner in all respects as if the trusts hrinbfe declared in favour of the sd A., his sons [& grandsons], were repeated, with the necy verbal alterons & the substiton of the name of each of my daurs in succession accordg to seniority, for the name of the sd A., with remr, &c.

Limitations to testator's daughters and their issue male, in remainder immediately after limitations to the sons and their issue male.

22. UPON TRUST that each of my great-grandsons (grandsons of the sd A.) to whom intts in tail male are hrinbfe limited, shl take an intt in tail general in the same order & priority as the intt in tail male hrinbfe limited to him, with remr IN TRUST for all my great-granddaurs (daurs of the sons born in my lifetime of the sd A.) sevlly & successively in remr one after the other in tail male, so that the daurs of an elder son of the sd A. shl always be preferred to the daurs of a younger son of the sd A., & shl, as betn themselves, take in order of seniority, with remr UPON TRUST that each of my sd great-granddaurs (daurs

Limitations in remainder to the issue general of testator's sons where there are previous limitations exhausting the testator's male issue (b).

(b) In the form in the text, males are preferred to females, and females claiming through males of a more remote generation are preferred to those claiming through males of a nearer generation. Sometimes the testator's

Order of

of the sons born in my lifetime of the sd A.) shl take an intt in tail general in the same order & priority as the intt in tail male hrinbfe limited to her, with remr IN TRUST for the first & other daurs of the sd A. born in my lifetime, sevllly & successively one after the other, accordg to seniority durg their respective lives, with an immediate remr after the death of each such granddaur of mine IN TRUST for her first & every other son sevllly & successively in remr one after the other accordg to seniority in tail male, with remr after the death of all such daurs of the sd A. & the default or failure of their issue male, IN TRUST for all my great-grandsons (sons of the daurs born in my lifetime of the sd A.), sevllly & successively in remr one after the other in tail general, so that the sons of an elder daur of the sd A. shl be preferred to the sons of a younger daur of the sd A., & shl as betn themselves take in order of seniority, with remr IN TRUST for all my great-granddaurs (daurs of the daurs born in my lifetime of the sd A.), sevllly & successively in remr one after the other in tail male, so that the daurs of an elder daur of the sd A. shl be preferred to the daurs of a younger daur of the sd A., & shl as betn themselves take in order of seniority, with remr UPON TRUST that each of my great-granddaurs (daurs of daurs born in my lifetime of the sd A.), shl take an intt in tail general in the same order & priority as the intt in tail male hrinbfe limited to her, with remr IN TRUST for the sons of the sd A. born after my death, sevllly & successively in remr one after the other accordg to seniority in tail general, with remr IN TRUST for the daurs of the sd A. born after my death, sevllly & successively in remr one after the other accordg to seniority in tail male, with remr IN TRUST for the daurs of the sd A. born after my death sevllly & successively in remr one after the other accordg to seniority in tail general, with remr UPON TRUST

limita-
tions in
tail as
between
males and
females.

daughters and their male issue are preferred to the female issue of the testator's sons ; in other words, males are preferred to females, and females claiming through males of a nearer generation are preferred to those claiming through males of a more remote generation. In this latter case, for consistency, the form in the text should be altered, so as to make the interests in tail male of the females precede the interests in tail general of the males of the same generation ; but it is believed that in practice this nicety is seldom attended to ; and it is apprehended that, in the absence of special instructions, the form in the text may be used, although the limitations to the daughters of the testator, and their male issue (f. 21), immediately follow the limitations to his sons and their male issue (f. 20).

that the sons, grandsons, daurs, & granddaurs of the sd B., C., & D., & of every son of mine hrafter born, shl take intts similar to & with the same order & priority as those hrinbfe limited in trust for the sons, grandsons, daurs, & granddaurs of the sd A. in remr after the default or failure of issue male of all my sons & daurs (a)], but so that the sons, grandsons, daurs, & granddaurs of an elder son of mine shl always be preferred to the sons, grandsons, daurs, & granddaurs of a younger son of mine, in the same mner as if the trusts hrinbfe declared in favour of the sons, grandsons, daurs, & granddaurs of the sd A. in remr as afsd were repeated, with the substiton of each of my sons in succession accordg to seniority, for the sd A., with remr, &c.

23. UPON TRUST that all my daurs & their respective issue shl take intts similar to & with the same order & priority as those hrinbfe declared in favour of my sons & their respective issue in the same mner in all respects as if the trusts hrinbfe declared in favour of my sons & their respective issue were repeated, with the necy verbal alterons & the substiton of each of my daurs in succession accordg to seniority for my sons resply, with remr, &c.

Limitation to testator's daughters and their issue by reference to limitations to sons and their issue (b).

24. UPON TRUST that the issue of my respective daurs in succession, accordg to the seniority of such daurs, shl take intts similar to & with the same order & priority as those hrinbfe limited in favour of the issue of my respective sons in remr after the default or failure of issue male of all my daurs, in the same mner in all respects as if the trusts hrinbfe declared in favour of the issue of my respective sons in remr as afsd were repeated with the necy verbal alterons & the substiton of my daurs for my sons, with remr, &c.

Limitations to issue of testator's daughters by reference to limitation to issue of sons.

25. PROVIDED ALWAYS & I hby declare that as regards the life intt in the settled land hrinbfe expressed to be given to any child of mine, the same shl not vest absolutely in such child unless & until he or she shl attain the age of twenty-five

Life interests not to vest absolutely until 25 (c).

(a) The words in brackets will be inserted if the limitations to the testator's daughters and their issue male, f. 21, precede the limitations in remainder to the issue general of the testator's sons.

(b) This form is intended to follow ff. 20 and 22. If f. 21 is inserted, f. 24 will be substituted for f. 23.

(c) Where it is desired that the management of the property should be undertaken by the trustees so often as the person beneficially entitled to a life interest is under twenty-five, the life interests must be made contingent

yrs. And I direct that if & so often as any child of mine sh^l be entitled, contingently on attaing the age of twenty-five years, to a life intt in posson in the settled land, my trees sh^l enter into & continue in posson of the settled land on behalf of such child ; & in every such case may exercise, in relation thereto, all the powers of managemt conferred upon trees by s. 102 of the S. L. Act, 1925 ; & in relation to the income thro^f, all the powers of maintce & the powers incidental th^rto conferred upon trees by s. 31 of the T. Act, 1925.

Successive limitations in fee simple defeasible on death under 21 (d).

26. IN TRUST for my eldest son who sh^l survive me, in fee simple, & if he sh^l die under the age of twenty-one yrs IN TRUST for my other sons who sh^l survive me successively by way of executory limitation accordg to their respective seniorities in fee simple resply, & so that if any such son sh^l die under the age of twenty-one yrs his intt sh^l be divested & go to my next son, but, if I sh^l leave no son surviving me who attains the age of twenty-one yrs, then, &c.

Successive limitations in fee simple with ulterior limitations to vest at 25 as far as law permits, with provision for issue and portions for younger children (e).

27. IN TRUST for my eldest son —, if he sh^l survive me & attain the age of twenty-five yrs, in fee simple, but if he sh^l die in my lifetime or sh^l survive me & afterwards die under that age, then IN TRUST for the issue (if any) of my sd eldest son in mner followg, namely : IN TRUST for the eldest or only son of my sd eldest son who sh^l be born in my lifetime & sh^l survive me & attain the age of twenty-five yrs, in fee simple, And in default of any such son then IN TRUST for the eldest or only son of my sd eldest son who sh^l be born after my death & sh^l attain the age of twenty-one yrs, in fee simple, And in default of any such son, then IN TRUST for the eldest or only daur of my sd eldest son who sh^l be born in my lifetime & sh^l survive me & attain the age of twenty-five yrs or marry under

on attaining that age, so that no beneficiary may become tenant for life until attaining twenty-five: see *ante*, p. 647, note. Otherwise, any powers of management conferred upon the trustees during the interval between the ages of twenty-one and twenty-five, would by virtue of the S. L. Act, 1925, s. 108, become exercisable by the beneficiary. The effect of the clause in the text is to constitute the trustees statutory owners in each case until the beneficiary attains the prescribed age, and to invest them with all the powers of management conferred by the S. L. Act, 1925, s. 102 (5), during a contingency. The latter part of the clause is merely directory.

(d) See note (c) above.

(e) Limitations of this kind are often troublesome to frame, and are less convenient than an entail.

that age, in fee simple, And in default of any such daur then IN TRUST for the eldest or only daur of my sd eldest son who shl be born after my death & shl attain the age of twenty-one yrs or marry under that age, in fee simple; PROVD ALWAYS, that if my sd eldest son shl die bfe attaing a vested intt as afsd, leaving issue more than one child, then the settled land shl stand charged with the paymt to my trees of the capital sum or sums following, namely, in respect of each younger child of my sd eldest son (meang thereby a child other than the child who shl become entitled to the settled land under the trusts hrinbfe declared, who if born in my lifetime shl attain the age of twenty-five yrs, or if born after my death shl attain the age of twenty-one yrs, or being a daur shl marry) & in trust for such younger child, the capital sum of £——, And with the further paymt of such annual sum not exceedg intt on £—— at the rate of £4 p.c. p.a. as my trees may from time to time require, to be applied by them for or towards the maintee & educon of or to be pd to each such younger child, or each child who shl for the time being be presumptively a younger child until his or her portion shl become raisable & payable, And in default of any such issue of my sd eldest son then IN TRUST for my second son ——, if he shl survive me & attain the age of twenty-five yrs, in fee simple, And if he shl die in my lifetime or shl survive me & afterwards die under the age of twenty-five yrs then Upon the like trusts in favour of the issue of my sd second son & the like provons for his younger chln (if any) as are hrinbfe declared in favour of the issue of my sd eldest son, And in default of such issue then IN TRUST for my daur ——, if she shl survive me & attain the age of twenty-five yrs or marry under that age, in fee simple, & if she shl die in my lifetime then Upon the like trusts in favour of the issue of my sd daur & the like provons for her younger chln (if any) so far as the same shl be capable of takg effect as are hrinbfe declared in favour of the issue of my sd eldest son, And in default of such issue, or if my sd daur shl survive me & afterwards die under the age of twenty-five yrs & witht havg been married then IN TRUST to permit my sister —— & her assns to possess & enjoy or receive the rents & profits of the settled land durg her life, witht power of anticipon, & from & after her death, Upon the like trusts for the sons & daurs resply of my sd sister successively accordg

to seniority & their respective issue, & with the like preference of sons & their issue to daurs & their issue, & the like preference of an elder son or daur (as the case may be), & his or her issue to a younger son or daur (as the case may be), & his or her issue as are hereinbefore contained in favour of my own respective child & their respective issue, save & except that in the case of any child or grandchild of my said sister who may be born after my death, the age of twenty-one shall in all cases be substituted for that of twenty-five as the period of vesting, And subject thereto, &c.

Limitation to issue of tenant for life as he shall appoint: short form (a).

Ultimate limitation to testator's heirs (b).

Ultimate limitation to person who shall be testator's right heir at a particular time.

Trusts for giving effect to charge of portions for testator's younger children (c).

28. UPON TRUST for all or any of the child [or remoter issue] of the said —, for such intents or intent, & if more than one, in such shares & manner as the said — shall by any deed or deeds, revocable or irrevocable or by will or codicil appoint, AND IN DEFAULT of & subject to any such appointment, &c.

29. IN TRUST for my own right heirs in fee simple or absolutely according to the nature of the property.

30. IN TRUST for the person or persons who at the time of the failure or determination of the preceding limitations & when this present ultimate limitation shall take effect in possession, shall answer the description of my heir-at-law, such persons, if more than one, to take as tenants in common in the shares in which they would have taken, had I died intestate & entitled to an entailed intent in the settled land immediately before the time at which such persons are to be ascertained.

31. (i.) IF I shall have any younger child or child, meaning thereby any child or child who survive me & being male attain the age of twenty-one years, or being female attain that age or marry, [or who die in my lifetime leaving issue surviving me,] other than any son or sons of mine who at my death or before his or their respectively attaining the age of twenty-one years shall [or any daughter or daughters who at my death or before her or their respectively attaining that age or marrying shall] or would if of full age be or become (d)

(a) The full form may readily be adapted from f. 15, *ante*, p. 662; and see also the form of power to appoint to any son in tail, p. 662, f. 14. As to the question of perpetuity, see Vol. I., pp. 84 *et seq.*

(b) See *ante*, p. 663, note (a); and *Owen v. Gibbons*, [1902] 1 Ch. 636.

(c) In this form a fixed sum is given to each child; f. 23, at p. 668, where a sum either fixed or dependent on the number of the children is given to the children as tenants in common, can be adapted.

(d) As to the insertion here of the word "indefeasibly," and as to variations for name and arms or other shifting clauses, see *ante*, pp. 654, 655, notes.

entitled under this my will to a life intt in posson in the settled land, then my trees shl receive for the portion of each younger child of mine the sum of £—— [free from death duties] to be raised by or at the request of my trees by the creation of such legal este in or charge by way of legal mtge upon the settled land or any pt or pts throf, or by such other means as may be reasonably necessary, & to be held by my trees in trust for such younger child or his or her repres, And shl also receive such annual sum not exceedg £—— [free from death duties] as they may require for the maintee, educon, or benefit of each child for the time being entitled in expectancy to a portion, & apply the same accordgly, either directly or by paying the same to the guardian or guardians of such child witht seeing to the applicon throf.

(ii.) My trees may at any time or times raise or require paymt to themselves of any sum or sums not exceedg in the whole a moiety of the expectant portion of any child of mine, & apply the same at their discron for the advancemt or benefit of such child.

(iii.) *Advancemts by testator to be brought into hotchpot*, p. 808, f. 27, *mutatis mutandis*.

(iv.) My trees may at their discron, when any portion or portions shl be payable, or when any sum shl be required for an advance raise or require paymt to themselves of the whole or any pt, &c., *continue power to raise total sum for portions before all are payable*, p. 670, sub-clause (vi.).

32. EVERY MALE havg a life intt hrunder in the settled land may either bfe or after he shl become entitled, &c., *continue power to jointure*, p. 672, f. 25. Power to males to jointure.

33. EVERY FEMALE havg a life intt hrunder in the settled land may either bfe or after she shl become entitled, &c., *continue power to appoint rent-charges (a)*, p. 672, f. 26. Power to females to limit rent-charges to husbands.

34. EVERY PSON havg a life intt hrunder in the settled land [if other provision is made for the younger chln of the first tenant for life, say, "other than the sd, first tenant for life"], may either bfe or after, &c., *continue power to charge portions*, p. 675, f. 29. Power to charge portions.

35. IN ADDITION to the powers of managemt durg minority conferred upon trees by s. 102 of the S. L. Act, 1925, my trees Additional power of

(a) Add also ff. 30 and 31, *ante*, pp. 675, 676, if appropriate, *mutatis mutandis*. For a form of power to female tenants for life to appoint life interests to surviving husbands, see *ante*, p. 676, f. 32.

manage-
ment
during
minority.

Clause in-
troduc-
tory to
clauses
extending
powers of
S.L.Act.

Clause
as to
residence.

Restric-
tion of
powers in
relation to
mansion-
house (b).

Exercise
of powers
in settle-
ment.

Charge of
jointure.

shl have pwr to remit rents to tenants witht being responsible for loss.

36. I DECLARE that every pson who is for the time being tenant for life & every pson or psons who under the S. L. Act, 1925, has or have for the time being the powers of a tenant for life in respect of the settled land (hrinar called the tenant for life) may exercise over or in relation to the settled land [but only with the consent in writg of my trees so far as the powers hrinar conferred are in excess of the powers of a tenant for life under the sd Act] all or any of the powers hrinar contained by way of extension or enlargemt of the powers & provons of the sd Act, that is to say, *insert such of the additional powers set out, ante, pp. 677 et seq., as may be required.*

37. *Provon for there being no tenant for life, see ante, p. 690, f. 3.*

38. It is my parlar wish & request, but witht imposg any legal obligon, that the pson for the time being entitled to the posson of my mansion-house at —, if of full age, will make it his or her ppal place of residence.

39. THE POWERS of disposg of settled land conferred on a tenant for life by the S. L. Act, 1925, shl not be exercised in relation to my mansion-house — afsd & the stables, gardens, pleasure grounds & appurtees usually enjoyed thrwith witht the consent of my trees or an order of the ct.

40. *Additional modes of investmt & applicon of capital moy, see pp. 684 et seq.*

41. (i.) *Recite settlemt giving powers to charge jointure & portions.* Now in exercise of the power vested in me for this ppose by the sd settlemt, & of every or any other power in this behalf me enablg, I hby appt to my wife & her assns durg her life, if she shl survive me, a yrly rent-charge of £—— by way of jointure, & so that in case of her marryg again the same shl be witht power of anticipon, to be charged upon & issuing out of all & singr the ppty comprised in the sd settlemt (thrin & hrinar called the T. Este) situate in the county of — afsd (subjt & witht prejudice to the estes, intts, & charges, prior to & powers overreachg my life intt thrin, to be considered as accruing from day to day, but to be payable by eql qtrly paymts witht any deduction [except for death duties], the first of such paymts to be made at the expiron of three calr months from my death, if my wife shl then be living.

(b) See S. L. Act, 1925, s. 65, and see another form, *ante*, p. 690.

(ii.) In exercise, &c., *as above*, I hby charge the T. Este (subjt & witht prejudice as afsd, & subjt to the sd rent-charge hrinbfe appted to my sd wife & to the powers & remedies for recoverg & securg the same), with the paymt of the sum of £—— [or, “the respective sums next hrinar mentd” [free] from death duties] as & for the portion or portions of my child or chln (other than any son or sons who at my death or bfe attaing the age of twenty-one yrs shl become entitled under or by virtue of the sd settlemt to the first entailed intt in the T. Este, or any daur or daurs who at my death or bfe attaing that age or marrying shl become indefeasibly (c) entitled under the sd settlemt to the first entailed intt in the T. Este) [that is to say, if there shl be but one child (other than as afsd) who shl attain a vested intt as hrinar provd in such portion moy, the sum of £——, & if there shl be two or more such chln (other than as afsd) the sum of £——] to be an intt or intts vested in & payable to such child or chln (other than as afsd) on his or their resply attaing the age of twenty-one yrs, or in the case of a daur or daurs marrying, & if more than one in eql shares, & to carry intt at the rate of £4 p.c. p.a. from the time when the same resply shl become payable until paymt.

Charge of portions.

(iii.) In exercise, &c., *as above*, if any child of mine for whom a portion is hby charged shl at my death be under the age of twenty-one yrs, & in the case of a daur unmarried, I hby further charge the T. Este (subjt & witht prejudice as afsd) with the paymt of such sum or sums not exceedg for any such child or chln one-fourth pt of his, her, or their respective expectant, or presumptive portion or portions as my trees shl at any time or times deem pper to be raised for the advancemt or benefit of any such child or chln, & to be applied by my trees for that ppose in such mner as they shl think fit, & so that any sum so made raisable for the advancemt of any such child shl not be taken into account in estimatg the total sum raisable for portions as afsd, unless the child advanced shl become entitled to a portion, or but for this psnt provon more than the sum of £—— in the whole wd be raisable for such portions & advancemts.

Advancement.

(iv.) In exercise, &c., *as above*, if any child of mine for

Maintenance.

(c) See *ante*, p. 655, note (c).

whom a portion is hby charged shl at my death be under the age of twenty-one yrs, & in the case of a daur unmarried, I hby also charge the T. Este (subjt & witht prejudice as afsd) with the paymt from & after my death of such annual sum or sums of moy (not exceedg what the intt of the then expectant or presumptive portion of such child wd amt to at the rate of £4 p.c. p.a.) as my trees shl deem sufft & pper for the maintce & educon of every or any such child, such annual sums to be clear of all deductions [except for death duties], & to be pd or applied in such mnner & at such times as my trees shl think fit, & my trees may either themselves so apply the same or may pay the same to the guardian or guardians of such child or chln for the ppose afsd witht seeing to the appicon throf.

Devise and bequest of property abroad in trust for sale and settlement of net proceeds.

42. I DEVISE & BEQUEATH all the ppty, whether real or psonal, to wch I may be entitled at the time of my death in the Island of — to my trees, UPON TRUST to sell, convert into money, & get in all such ppty, at such time or times & in such mnner & upon such terms & condons, as in their uncontrolled discretion they shl think fit, with full power to let & manage all the same ppty pendg such sale & conversion, as if they were absolute owners throf; & upon trust to stand possessed of the net proceeds to arise from the sale & conversion of the sd ppty & of the rts, profits, & income throf until sale & conversion throf, UPON TRUSTS correspondg to the trusts hrin declared concerng the settled land & the income throf resply.

Clause putting son to election to resettle family estate (d).

43. I DEVISE the — Este, of wch I am now tenant for life under the limitations of a settlmt dated, &c., or, “the will, dated, &c., of —,” to my trees Upon the trusts, & with & subjt to the powers & provons hrin declared & contd concerng the settled land (e), but not so as to increase or multiply charges or powers of charging: AND I DIRECT that the devise lastly hrinbfe contd shl take effect under the doctrine of election, & shl thereby bind every son [child] of mine who shl under the limitations of the sd settlmt, or, “will,” become tenant in tail male [or in tail], in posson of the — Este, who shl accordgly

Election.

(d) No case of election is raised by a gift by will void for remoteness: *Re Wright*, [1906] 2 Ch. 289; see *Re Paul*, [1921] 2 Ch. 1. As to the effect of election where the residue is insufficient for payment of debts, see *Re Williams*, [1915] 1 Ch. 450.

(e) If the will does not contain any devise in strict settlement, set out the trusts.

at the request in writg & to the satisfon of my trees & within such time as they shl appt & at the expse of my este execute & do after he [or she] shl attain the age of twenty-one yrs all such assuresses & acts as may be necy for evidencg such election, & givg effect to the devise of the sd — Este hrinbfe contd : AND I DECLARE that if any son [child] of mine shl refuse or neglect to comply with any such request in writg of my trees, or to execute & do such assuresses or acts as afsd or any of them, then my will shl be construed & the rights of all psons claimg hrunder be determined in all respects as if such son [child] had died immedly bfe me witht havg been married: PROV'D ALWAYS that any assurance wch shl be executed by any of my sd sons [chln] for the ppose of complyg with the condon hrinbfe imposed by me resptg the settlmt of the sd — Este, & wch shl be approved of by my trees by deed shl for all pposes be accepted as sufficient compliance with such request.

44. I BEQUEATH all the psonal ppty of or to wch I shl be possessed or entitled at my death, or over wch I shl then have a general power of appointmt by will, except chattels real & except ppty by this my will or any codicil hrto orwise disposed of, but includg any share or shares & intt to wch I may be entitled at my death in the proceeds of sale of any ppty then held in trust for sale, to my trees, upon trust that my trees shl sell, &c., *continue trusts for sale & conversion & for paymt of funl & testamentary expenses, &c., out of the proceeds as in f. 789, ante, p. 3.* AND I DECLARE that my trees shl stand possessed of the residue of the sd moy Upon trusts corresponding to the trusts hrin declared concerng the settled land.

Bequest of residuary personal estate on trust of settled land.

45. I GIVE the sum of £—— to the psons or pson who shl at my death be the trees for the pposes of the S. L. Act, 1925, of a settlmt dated, &c., to be held by them Upon trusts correspondg to the trusts affectg the freehd ppty thrby settled in strict settlmt or such of the same trusts as shl as my death be subsistg & capable of takg effect.

Bequest to be applied as capital money of an existing settlement.

APPOINTMENT OF TRUSTEES AND MISCELLANEOUS.

Clause
supple-
mental to
statutory
power of
appoint-
ing new
trustees
(a).

Thesame.

Another
form (b).

Appoint-
ment of
trustees
under
S. L. Act.
The same
as to a
particular
estate.

Power to
appoint
special

1. THE POWER of apptg a new tree or new trees of this my will shl be vested in my wife durg her life [& after her death in the sd, *tenant for life*, durg his life, or, "in the sd, *tenants for life*, durg their joint lives, & in the survor of them durg the life of such survor"].

2. THE POWER of apptg a new tree or new trees of this my will shl be exercisable with the consent of my sd wife durg her life & after her death of the sd, *tenant for life*, durg his life, or, "of such of my sd sons as shl for the time being be of full age," or, "of the pson or psons of full age (if any) for the time being entitled to the income of the trust fund;" & afterwards, or, "& if & so long as there shl be no such pson," at the discron of the psons or pson in whom such power shl for the time being be vested under the statute in that behalf.

3. I APPT my trees to be trees of the settlemt made by this my will for the pposes of the S. L. Act, 1925 (c).

4. I APPT my trees to be trees of the settlemt hby made of the sd — Este, or, "created by the devise in strict settlemt hrinbfe contd," for the pposes of the S. L. Act, 1925.

5. MY TREES may appt any psons, not being less than two in number, of whom any one or more of my trees may be one or more, to be trees of such pt of my este as shl for the time

(a) In the common case where the power is to be vested in the continuing trustees without any restriction, the statutory provisions (as to which see Vol. I., p. 119) are sufficient. The donee of the statutory power may appoint himself: T. Act, 1925, s. 36 (1). The donee of an express power may also appoint himself unless, as is not the case in the form in the text, the wording of the power contemplates the appointment of other persons: *Montefiore v. Guedalla*, [1903] 2 Ch. 723. In cases where the S. L. Act applies, it is desirable that the power should be vested in the trustees in order that the trustees may be independent of the tenant for life. It is sometimes provided that the trustees shall not be reduced below a certain number; see the variation, *ante*, p. 584, and note thereto. The full power of appointing new trustees (*ante*, p. 583, f. 1) is rarely used.

(b) See last note.

(c) Where a settlement is created by will or arises on an intestacy and there are no trustees appointed for the purposes of the S. L. Act, 1925, the personal representatives are constituted such trustees by s. 30 (3) of the S. L. Act, 1925, until other trustees are appointed. A sole personal representative, not being a trust corporation, must appoint an additional trustee to act with him to give receipts for capital money arising on dealings by the tenant for life with the settled land.

being be situate in —, *or*, “the origl & accruing share or portion hby provd for any child of mine in the trust fund,” *or as the case may be*, & upon every such apptmt the ppty, *or*, “share or portion,” in respt of wch such trees shl be so appted shl as soon as circes will admit be transferred so as to be vested in the trees so appted Upon such trusts & subjt to such powers & provons as are hrin declared & contained concerng the same, & so that all the trusts, powers & provons of this my will shl, so far as the same may be capable of applying, be applicable to such trees in relation to such ppty, *or*, “share or portion,” as afsd, & the ppty for the time being representg the same, in the same mner, so far as may be, as if such trees had been the trees for the time being of this my will.

trustees
of par-
ticular
property
(a).

6. THE NET proceeds of sales, & rents, income, or other moys realised from my ppty in —, wch shl not be required for paymt of debts, or expses, or other pposes in —, shl from time to time be remitted to my trees in England, to be applied by them upon the trusts of this my will.

Declara-
tion as to
moneys
received
by resi-
dent trus-
tees (b).

7. IF ANY pson shl witht the consent in writg of my exs, wch it shl be in their absolute discrion to give or refuse (c),

Condition
not to
oppose

(a) Separate sets of trustees of parts of the trust property held on separate trusts may now be appointed under the T. Act, 1925, s. 37; and the Court can appoint separate trustees of separate estates: *Re Dennis*, 12 W. R. 575; or separate shares: *Re Moss*, 37 Ch. D. 513; but a special power, as above, may occasionally be desirable. When power is given to appoint special trustees of any share, it will probably be desirable to insert also the power to appropriate specific parts of the property in satisfaction of any of the shares; see *ante*, p. 833, f 5.

(b) On the question whether colonial or foreign duties are payable out of the general residue or out of the colonial or foreign property, see *Peter v. Stirling*, 10 Ch. D. 279; *Re Brewster*, [1908] 2 Ch. 365; *Re De Sommery*, [1912] 2 Ch. 622; *Re Scott*, [1914] 1 Ch. 847. Local death duties on property situate in British possessions may in certain cases be deducted from the English estate duty: Fin. Act, 1894, s. 20. Where there was no express provision in the will, annuities were in *Re Muffett*, 39 Ch. D. 534, and periodical payments were in *Re Henry*, [1907] 1 Ch. 30, directed to be capitalised and the capitalised value charged to capital; but in *Re Dawson*, [1906] 2 Ch. 211, *Re Perkins*, [1907] 2 Ch. 596, and *Re Poyser*, [1910] 2 Ch. 444, they were directed to be dealt with in accordance with the rule in *Althusen v. Whittell*. Premiums on policies which the trustees are authorised to retain unconverted, are chargeable to capital: *Re Sherry*, [1913] 2 Ch. 508.

(c) The executors should be given power to relax the condition, otherwise it might be difficult to resist the probate of a forged codicil.

probate
(d).

dispute the validity of or refuse to confirm this my will or any codl hto, if required so to do by my exors, such pson shl forfeit all benefits hby or by any codl hto given to him or her, & the same not being residuary shl fall into my residuary este, or being residuary shl (togr with any addon wch may accrue thereto by virtue of this provon) go to the other psons or pson entitled to my residuary este as if the pson incurrg such forfeiture had not been included in the residuary gift.

Clause
binding
legatees
to abide
by
opinion of
counsel.

8. IF ANY question or dispute shl arise as to the construcion of this my will or any codl hto, my trees may cause a pper case to be laid bfe counsel to be selected by them, or in case of dispute by the President for the time being of the Conveyancers' Club, called the Institute [the Law Society], for the determinon of the same, & such determinon shl be final & bindg notwithstanding the pendency of any action or other proceedings in wch such question or dispute could pperly be determined: AND every pson claimg under this my will or any codl hto shl at the request in writg of my trees execute & do, at the expse of my este, all such instrumts, acts, & things as may be pper for carrying such determinon into effect; & if any such pson shl wilfully neglect or refuse upon such request to execute or do the same, or shl institute or procure any other pson to institute any action or other legal proceedings for determing any such question or dispute as afsd, then he or she shl forfeit all benefits, &c., as in last form.

Clause
putting
bene-
ficiaries to

9. (i.) IF ANY devise, bequest, or disposon hrin contained, or, "contd in my will of even date herewith disposing" of my

Condi-
tions not
to dispute
will.

(d) Generally speaking, a condition not to dispute the validity of a will is considered in the case of personal estate to be *in terrorem* only, and therefore inoperative, unless there is a gift over on a breach of the condition: *Cleaver v. Spurling*, 2 P. Wms. 528; *Stevenson v. Abington*, 11 W. R. 935; but, in the case of a devise of real estate, such a condition has been held to be valid, even without a gift over: *Cooke v. Turner*, 15 M. & W. 727; but see this case commented on, *Jarman*, 6th ed., 1549.

Where clauses of this kind merely express an intention to prevent frivolous and vexatious litigation, such litigation will cause a forfeiture, though reasonable litigation will not: *Adams v. Adams*, [1892] 1 Ch. 369; *Re Williams*, [1912] 1 Ch. 399; but where a clause is so wide that it would prevent a beneficiary from asserting or defending his rights against a wrong-doer, it is void: *Rhodes v. Muswell Hill Land Co.*, 29 Beav. 560; see also *Re Raven*, [1915] 1 Ch. 673.

If the limitations are in strict settlement, it will be better to frame the gifts over in the same manner as in the name and arms clause, *ante*, p. 664, f. 21.

real, leasehd, or immovable ppty in any British Colony or Dependency, or in any foreign country, wd (but for this psnt provon) fail wholly or partially to take effect owing to this my will, or, "my sd concurrent will" being for any reason ineffectual to dispose of the same, such devise, bequest, or disposon shl take effect under the doctrine of election so as to be binding on all the beneficiaries hrunder, or, "under my sd concurrent will," who shl accordgly at the request in writing & to the satisfson of my trees, & at the cost of my este, execute & do all such assurces, instrumts, & acts as my trees shl require for the ppose of evidencing such election & giving effect to such devises, bequests, & disposons accordg to the law applicable thereto.

election
as to
foreign or
colonial
property
(e).

(ii.) If any beneficiary hrunder shl refuse or neglect for three calr months or such further period as my trees shl in writing allow, to comply with such request or orwise fail to execute & do all such assurces, instrumts, & acts to the satisfson of my trees, then the beneficiary so refusing & his or her husbd, wife, & issue shl forfeit all benefits hby or by any codl hto given to him, her, or them, or wch he, she, or they might take under the exercise of any general power of apptmt hrin or in any codl hto contained, & the same not being residuary shl fall into my residuary este, & being residuary shl (togr with any addition wch may accrue thereto by virtue of this provon) accrue to the other psons entitled to my residuary este in the same mner as if such beneficiary had died bfe me witht leaving a wife, husbd, or issue.

10. (i.) *Recite breach of trust committed by trees of testor's marre settlemt*: Now I HBY DECLARE that my residuary este shl be held upon & for such trusts & pposes as shl render the same a good & sufficient indemnity to the trees of my sd marre settlemt & each & every of them & all past & future trees of the sd settlemt & their respective exs & ads, estes & effects, against all actions, suits, proceedings, losses, costs, charges,

Trust for
indemnify-
ing
trustees
of tes-
tator's
marriage
settle-
ment in
respect of

(e) See *Re De Virte*, [1915] 1 Ch. 920; *Re Ogilvie*, [1918] 1 Ch. 492. A married woman restrained from anticipation is not put to election; but a spinster whose interest is subject to restraint prospectively on marriage, must elect: *Re Tongue*, [1915] 1 Ch. 390; affirmed on appeal as to question of fact, [1915] 2 Ch. 283; *Re Hargrove*, [1915] 1 Ch. 398. See further the doctrine of election discussed in *Brown v. Gregson*, [1920] A. C. 860, 868.

Election.

breaches
of trust
(a).

expses, liabilities, claims, & demands whatsr for or on account of any of the acts & dealgs hrinbfe referred to, or any other acts or dealgs of the trees or tree of the sd settlemt up to the time of my death : And that the same premes or any pt throf may for effectuatg such indemnity be dealt with & resorted to in such mner as the sd psnt or any past or future trees or tree of the sd settlemt, or their or his exs or ads, or any of them, may require, & that such trust for the ppose of indemnity shl be deemed the first & paramount trust & disposon hby made of the sd premes.

(ii.) For further effectuatg such indemnity the psons benefly interested in my residuary este under this my will or any of them, their or any of their exs, ads & assns, shl be bound under the doctrine of election to adopt & confirm all the acts & dealgs of the sd trees or tree of my sd marre settlemt in the exercise of the trusts throf up to the time of my death, & especially, *refer to recited breach of trust*, & at the request in writg & to the satisfon of my exs or trees & within such time as they shl appt at the cost of my residuary este to execute & do all such instrumts & acts as may be by them reasbly required in that behalf, & for indemnifying & releasg all & every the psnt & past & future trees & tree of the sd settlemt, & their respective exs & ads, estes & effects, in respt of all such acts & dealgs & orwise givg effect to the indemnity & protection intended to be hby provd as afsd.

(iii.) If any pson so benefly interested as afsd or his or her exs, ads or assns shl refuse or neglect to comply with the request in writg of my exs or trees in that behalf, then my will shl be construed & the rights of all psons claimg hrunder shl be determined in all respects as if the pson so benefly interested had died bfe me witht leavg issue.

(iv.) Subjt to & after answerg the sevl trusts & pposes afsd my trees shl stand possessed of my residuary este, Upon the trusts & with & subjt to the powers & provons hrinbfe declared & contd concerng the same, *or as the case may be*.

The same.
Short
form.

11. IF THE trees or tree of a settlemt, &c., [being the settlemt made on my marre,] have or has htofore committed or shl at any time or times hrafter commit a breach or breaches of trust

(a) As to the power of the Court to relieve a trustee from liability for breach of trust, see T. Act, 1925, s. 61.

with my consent given expressly or by implication, they or he shl be entitled to be fully indemnified against the consequences throf out of my residuary este, [or, "by the pson or psons benefly interested in my residuary este who or whose exs, or ads shl make any claim against the sd trees in respt of such breach or breaches of trust"].

12. WHAS BY a settlmt dated, &c., & made, &c., a sum of £—— was settled upon trust for me durg my life & after my death in trust for my late husbd durg his life with remr in trust for our issue, & in the event (wch happened) of there being no such issue, in trust for such pson or psons as I shd by will or codl appt, & in default of apptmt in trust as thrin mentd: AND WHAS portions of the sd fund amtg to £—— were in the lifetime of my sd husbd advanced to him by the trees of the sd settlmt upon our joint request in writg, & a sum of £—— has since the death of my sd husbd been advanced to me out of the sd fund by the sd trees, & further sums may possibly be hrafter advanced by them to me throu: AND WHAS investmts of portions of the sd fund have been made in secs wch were not authorised: AND WHAS I desire to indemnify the trees of the sd settlmt in respt of all such advances & investmts as afsd, & all other (if any) past or future breaches of trust committed by the trees of the sd settlmt in my lifetime in mnner hrinar expressed, NOW in psuance of the power given to me by the sd settlmt & of every other power in this behalf me enabling I hby appt the whole of the sd fund (includg as well the portion throf wch may remain at my death as the portions throf wch have been advanced to my sd husbd & myself as afsd or wch may hrafter be advanced to me) to the trees of this my will Upon trust & to the intent in the first place that the psnt & all past & future trees of the sd settlmt, & their respective exs & ads, estes & effects, shl be kept fully indemnified & protected by & out of the sd fund against all claims & demands, actions, proceedings, costs, damages, & expses in respt of the advances htofore made to my sd husbd & myself or wch may hrafter be made to me out of the sd fund or in respt of any such investmts as afsd or any other breaches of trust wch have been or may be committed in relation thereto durg my life, my will & intention being that no such claim or demand as afsd shl

The like,
by ap-
point-
ment of
the
settled
fund.

be made either against the sd trees, or any past or future trees, or their respective exs or ads, estes or effects, or the este of my sd husbd, or my own este : AND SUBJT as afsd, Upon trust to apply the sd fund (if need be) in paymt of my debts in aid of my general este : AND SUBJT as hrinbfe mentd Upon trust, &c.

Trust for
accumu-
lation (b).

13. MY TREES shl durg the term of twenty-one yrs from my death [if my wife shl so long live,] out of the annual income of my residuary este yrly & every yr raise the sum of £—— [(c) & shl accumulate the same at compound intt by investg the same & the resultg income throf in any investmts hby authorised, with power from time to time to vary such investmts at discreon until the terminon of the sd period of accumulon, & shl then hold & apply the accumulated fund as pt of the capl of my residuary este, but so that no pt of such fund shl be invested in the pchase of land].

Direction
as to void
directions
for accu-
mulation
(d).

14. IF ANY directions for accumulon of income hrin contd shl be void owing to two periods of accumulon being directed, no accumulon shl be made under either of such directions after the expiron of twenty-one yrs from my death, and the income weh cannot lawfully be accumulated shl be pd to the pson or psons who wd have been entitled thereto if my will had not contained any direction for accumulon, or in the case of income arisg from a contingent or presumptive share wd have been entitled thereto if he, she, or they had attained a vested intt, but not so as to vest the capl.

Notices
under S.
L. Act (e).
Title of
S. L. Act.

15. *Provision as to notices under S. L. Act, as at p. 691, f. 5, mutatis mutandis.*

16. *Provision as to references to S. L. Act, as at p. 692, f. 8.*

(b) As to s. 166 of the L. P. Act, 1925, re-enacting the Accumulations Act, 1892, see *ante*, p. 661, note (e).

(c) If the sums are to be accumulated at simple interest, in lieu of the part bracketed, say, “& shl hold & apply the sums so raised & the investments throf as pt of the capl of my residuary este but so that the same shl not be invested in the pchase of land.”

(d) Having regard to the qualification of the statutory restrictions in reference to accumulation introduced by the L. P. Act, 1925, s. 165, this clause can seldom now be required. See *ante*, p. 661, note (e).

(e) See Vol. I., p. 605, note.

17. MY TREES shl hold a meeting once in every half-year to examine & adjust the accounts of my este, & each of them may retain & pay himself the sum of £—— for the trouble & expse of attendg each of such meetgs.

Meetings of trustees and fees (*f*).

18. Notices of dealings affectg any ppty for the time being subjt to the trusts of this my will or of any codicil hrtto may be given to the —— Bank, Ltd.

Nomination of trust corporation to receive notices (*g*).

19. IN THIS my will where the context so requires or admits the expression “my trees” shl, &c., *continue as at* p. 586, f. 8.

Interpretation.

20. THE BREVIATE or headings in the margin of this my will shl not be taken as part throf or in any mner affect the interpretation or construction throf.

Marginal notes not to form part of will.

TESTIMONIUM AND ATTESTATION.

1. IN WITNESS whrof I, the sd ——, have to this my will [to each sheet of this my will contained in this & the precedg —— sheets of paper (*a*)] [executed in duplicate, or, “triplicate,”] set my hand the day & yr first above written, or, “this —— day of ——.”

Testimonium of will.

2. IN WITNESS whrof I, the sd ——, have hrunto [to each sheet of this codl, contained in —— sheets of paper (*a*)] set my hand the day & yr first above written, or, “this —— day of ——.”

The same of codicil.

3. AS WITNESS my hand this —— day of ——.

Short testimonium.

4. SIGNED by the above-named testor as [a codl to] his last

Attestation of will or codicil (*b*).

(*f*) These sums are legacies: *Re Thorley*, [1891] 2 Ch. 613; and see *Re White*, [1898] 2 Ch. 217. If the trustees' fees are paid out of income taxed at the source the individual trustees are not liable to be directly assessed for income tax in respect of them: *Baxendale v. Murphy*, [1924] 2 K. B. 494.

Income tax on trustee's fees.

(*g*) See L. P. Act, 1925, s. 138, and *ante*, p. 323, note (*d*).

(*a*) The testator should sign each sheet, though this is not essential; the attesting witnesses usually sign the last sheet only.

(*b*) As to attestation, see the Wills Act, 1837, ss. 9, 10, and 15, and as to execution of a will of personalty by a British subject wherever domiciled, the Wills Act, 1861, and *post*, p. 896. A proper attestation clause is

Attestation.

will in the presence (c) of us, both psnt at the same time, who, in his presence at his request & in the presence of each other, have hrunto subscribed our names as witnesses.

The same.
Short
form.

5. SIGNED by the above-named testor in the joint presence of us who in his presence (c) & that of each other have hrunto subscribed our names as witnesses.

The same
where
testator
blind or
illiterate
(f).

6. SIGNED by the above-named testor with his mark (e) as his last will, after the same had first been read over to him in our presence (c) & had appeared to be perfectly understood & approved by him in the presence of us, &c., as in f. 4.

The same
where
another
person
signs for
testator
(g).

7. SIGNED by, *amanuensis*, with the name of the above-named testor as his last will in his presence & by his direction (h) in the presence of us, &c., as in f. 4.

The same
where

8. SIGNED, &c., as in f. 4, the interlineation betn the — & — lines of the — page, & the alteron in the — line of the — page, & the erasure on the — line of the —

useful, both as instructions to the testator and witnesses, and also as affording *primâ facie* evidence of due execution, and enabling an affidavit by one of the witnesses of due execution, which would otherwise be necessary, to be dispensed with, in ordinary cases of probate in common form. A power to a solicitor trustee to make professional charges is such a benefit as will be forfeited by his being an attesting witness: *Re Barber*, 31 Ch. D. 665; *Re Pooley*, 40 Ch. D. 1. Attestation of a codicil does not cause forfeiture of a gift by the will: *Tempest v. Tempest*, 2 K. & J. 642; and attestation of a will does not cause forfeiture where the will is afterwards confirmed by a codicil which the legatee does not attest: *Anderson v. Anderson*, L. R. 13 Eq. 381; *Re Trotter*, [1899] 1 Ch. 764. See also Robbins & Maw, 4th ed., 320.

(c) That is, actual visual presence: *Brown v. Skirrow*, [1902] P. 3.

(e) The testator's hand may be guided in making his mark or signature.

(f) In the case of blind and illiterate testators, or where a will is signed by some other person at the testator's request, the Probate Registrars are forbidden (see Principal Registry Rule 71; Tristram and Coote, 16th ed., 786) to allow probate unless they are satisfied that the will was read over to the testator before its execution, or that he understood its contents at its execution. Where satisfactory evidence cannot be obtained another affidavit is required: Tristram and Coote, 16th ed., 29.

The general rule is that if a will has been read over to a testator in a proper manner: *Garnett-Botfield v. Garnett-Botfield*, [1901] P. 335; or its contents brought to his notice before execution, he is presumed (in the absence of suspicious circumstances: see *Brown v. Fisher*, 63 L. T. 465; *Tyrrrell v. Painton*, [1894] P. 151; to know and approve of its contents: *Guardhouse v. Blackburn*, L. R. 1 P. at p. 116; *Fulton v. Andrew*, L. R. 7 H. L. 448; and see Tristram and Coote, 16th ed., 505; Jarman, 6th ed., 32, 494.

(g) See last note.

(h) The *amanuensis* may be one of the attesting witnesses, and should sign the testator's name.

page havg been previously made [or, the words “——” havg
prevsly been erased, or, substituted for the words “——” in
the —— line, or, interlined betn the —— & —— lines of the
—— page].

altera-
tions or
erasures
have been
made (i).

(i) As to alterations in a will, see Wills Act, 1837, s. 21. Alterations are presumed to have been made after the execution of the will, or of a codicil which does not refer to them; see cases collected, Jarman, 6th ed., 133, 156. If the alterations are not noticed in the attestation clause, the testator and the attesting witnesses should place their initials opposite or against each alteration, or at the foot, or end of, or opposite to a memorandum referring to the alterations; *In b. Treeby*, L. R. 3 P. & D. 242; which is sufficient to make them valid *In b. Blewitt*, 5 P. D. 116.

PRECEDENTS.

 OUTLINE WILL *showing the* GENERAL ARRANGEMENT *of the*
Clauses.

Commencement, p. 718.

1. *Appointment of exs, trees, & guardians*, p. 720.

2. *Confirmon of marre settlemt*, p. 719.

3. *Apptmts under special powers*, pp. 899, 901, 906.

4. *Specific bequests of psonal effects, &c.*, p. 725.

5. *Specific devises*, p. 736.

[*Direction as to duty*, p. 744.]

6. *Bequests of leasehds*, p. 745.

[*Direction as to duty*, p. 748.]

7. *Bequest of business*, p. 748.

8. *General legacies*, pp. 757 *et seq.*

To wife (immediate), p. 759.

To executors, p. 764.

To charities, p. 769.

To servants, p. 764.

[*Direction as to duties*, p. 768.]

9. [*Minority clauses as to legacies to infants*, p. 763.

10. *Bequests of annuities*, p. 773.

11. *Gifts of residue*, p. 781.

12. *Trusts for conversion, with power to postpone, &c.*,
 p. 785.

13. *Trust for payment of debts & legacies, &c.*, p. 789; &
investmt, p. 791.

14. *Beneficial trusts of residue*, pp. 791-825.

15. [*Maintenance, accumulon, & advancemt clauses*, pp.
 825 *et seq.*]

16. [*Investmt clauses*, pp. 829] *et seq.*

17. *Power to pchase land*, p. 829.

18. *Extension of statutory power of appropriation*, p. 833.

19. *Power to wind up or carry on business*, pp. 749 *et seq.*

20. *Various powers*, pp. 831 *et seq.*

21. *Declon that females shall take for septe use witht anticipon*, p. 822.

22. *Miscellaneous provons*, pp. 852 *et seq.*

23. *Clauses as to S. L. Act*, p. 858.

24. *Power to trees to settle questions*, p. 834.

25. *Provons as to apptmt of new trees*, p. 852.

26. *Apptmt of trees for purposes of S. L. Act*, p. 852.

27. *Power to charge for professional business*, p. 835.

28. [Definition of trees, p. 859.]

29. [Nomination of trust corporation to receive notices, p. 859.]

30. *Marginal notes not to form part of will*, p. 859.

31. *Testimonium & attestation*, p. 859.

SHORT FORMS.

I.

WILL *giving all property to WIFE.*

THIS is the will of A., of, &c., *add address & description.*
I GIVE all my ppty (a) including entailed ppty in posson to
my wife B. (b), & appt her my executrix. AS WITNESS my
hand this — day of —.

Attestation, p. 860, f. 5.

II.

WILL of MARRIED WOMAN *exercising a GENERAL POWER*
in her MARRIAGE SETTLEMENT (c) and giving RESIDUE
to HUSBAND. SHORT FORM.

THIS is the will of B. the wife of A., of, &c.

1. I APPT my husbd my exor.

2. *Specific legacies*, pp. 725 *et seq.*

3. *General legacies*, pp. 757 *et seq.*

(a) As to the exercise of general powers of appointment by this gift, see *ante*, p. 781, note (a).

(b) The omission of the name may involve an additional clause in the oath when probate is obtained.

(c) For a fuller form, see *Prec. XXIII.*, *post*, p. 905.

Exercise
of power.

4. I GIVE all the ppty over wch I have a general power of apptmt under my marre settlemt [or by any instrumt referring thereto] subjt to the interests of my husbd & chln thrin & to the powers by the sd settlemt [or by any other instrumt] or by law vested in the trees or tree of the sd settlemt & to every or any exercise of such powers to A., of, &c., absolutely.

Gift of
residue.

5. I GIVE my ppty includg all ppty in wch I have an entailed intt in posson not orwise disposed of by this my will or any codl hto to my husbd subjt to the paymt of my debts & funeral & testy expses & the legacies given by me. As WITNESS my hand this — day of —.

Attestation, p. 860, f. 5.

III.

WILL of a YOUNG UNMARRIED WOMAN *disposing of PERSONAL POSSESSIONS and other PROPERTY.* SHORT FORM.

THIS is the will of A., of, &c., spinster.

1. I APPT B. & C. my exors.

2. I GIVE to my sisters D. & E. all my movable chattels (other than moy or securities for moy) with a request that they will dispose of such of the same, &c., *continue as at* p. 734, f. 10, *mutatis mutandis*.

3. *General legacies*, pp. 757 *et seq.*

4. I GIVE the rest of my ppty includg ppty in wch I have an entailed intt in posson to my brothers & sisters equally.

As WITNESS my hand this — day of —.

Attestation, p. 860, f. 5.

IV.

WILL *disposing of PROPERTY in TRUST for CONVERSION and PAYMENT of INCOME to WIDOW for LIFE with remainder to the CHILDREN.* VARIATION for WILL of a small TRADER. SHORT FORM.

Commencement, p. 718, f. 1.

1. I APPT my wife B. & C., of, &c. (hrinar called my trees) to be my exors & trees.

[2. *Appointment of guardians*, p. 724, f. 11.]

3. *Gift to wife of personal effects, &c.*, pp. 725, 730, f. 1 or f. 2.

4. *Immediate legacy to wife*, p. 759, f. 8.

5. *Other general legacies*, pp. 757 *et seq.*

6. I GIVE the residue of my ppty includg ppty in wch I have an entailed intt in posson to my trees UPON TRUST to sell & call in the same with power to postpone such sale & calling in indefinitely witht being responsible for loss And I direct that the income of the unsold pt throf for the time being shl be applied in the same mner as if it were income of investmts of the proceeds of sale & calling in throf. Gift of residue.

7. MY TREES shl out of the proceeds of such sale & calling in & out of my ready moy pay my funeral & testy expses & debts & the legacies given by this my will or any codl hto [& the duty on any legacies hrinbfe given free of duty] (d). Trust of proceeds.

8. MY TREES shl invest the residue of the sd moys in their names in or upon any investmts for the time being authorised by law for the investmt of trust funds *with the exception & prohibition against holdg bearer securities or addg any other modes of investment wch may be desired*, see p. 537. Trust for investment.

9. MY TREES shl pay the income of the sd moys (wch with the investmts for the time being representg the same are hrinar called the trust fund) to my wife durg her life [witht power of anticipon durg any coverture]. Life interest.

10. AFTER THE death of my wife my trees shl stand possed of the trust fund IN TRUST for all or any my chln or remoter issue in such mner in all respts & either absolutely or at the discretion of any pson or psons as my wife shl by deed or by will or codl appt And in default of & subjt to any such apptmt IN TRUST for all or any my chln or child who being male attain the age of twenty-one yrs or being female attain that age or marry if more than one in eql shares. Trusts of capital.

11. No CHILD of mine who or whose issue shl take any pt of the trust fund under any apptmt, &c., *continue as at* p. 525, f. 17. Hotchpot clause.

[12. *Power to trustees to carry on business*, p. 753, f. 5.]

13. *Power to settle questions & apportion blended funds*, p. 834, f. 9.

14. *Extension of statutory power of appropriation*, p. 833, f. 5.
 15. *Power to professional trustee to charge*, p. 835, f. 10.
 16. [*Nomination of trust corporation to receive notices*, p. 859 f. 18.]
 17. *Interpretation of "trustees,"* p. 859, f. 19.
- Testimonium & attestation*, p. 859.

V.

WILL of a WIDOWER providing for CHILDREN, some of whom are INFANTS, and the CHILDREN of DECEASED CHILDREN. SHORT FORM.

Commencement, p. 718, f. 1.

1. *Appointment of executors & trustees*, p. 721, f. 2.
 2. *Appointment of guardians*, p. 724, f. 11.
 3. *Specific legacies*, pp. 725 et seq.
 4. *General legacies*, pp. 757 et seq.
 - 5-7. *Gift of residue in trust for conversion, trust of proceeds & trust for investmt as in Prec. IV., clauses 6-8.*
 8. MY TREES shl stand possessed of the sd moys (weh with the investmts for the time being representg the same are hrinar called the trust fund) & the income throf IN trust, &c., *continue as at* p. 803, f. 18.
 9. *Advances to children by testator to be brought into hotchpot*, p. 808, f. 27.
 10. MY TREES shl apply, &c., *continue maintenance & accumulon clause for children & grandchildren as a class*, p. 825, f. 1.
 11. *Power to keep up house for infants*, p. 828, f. 7, saying, "my infant child or children or grandchild or grandchildren who shl have no parent living for the time being."
 12. *Power to settle questions & apportion blended funds*, p. 834, f. 9.
 13. *Extension of statutory power of appropriation* p. 833, f. 5.
 14. *Power for professional trustee to charge*, p. 835, f. 10.
 15. [*Nomination of trust corporation to receive notices*, p. 859, f. 18.]
- Testimonium & attestation*, p. 860, f. 5.

VI.

WILL of NEWLY MARRIED (a) MAN in favour of his WIFE and CHILDREN by REFERENCE to the trusts of his MARRIAGE SETTLEMENT with ULTIMATE TRUST for his BROTHERS and SISTERS. SHORT FORM.

I, testor of, &c., declare this to be my last will wch I make this — day of —. Com-
mence-
ment (b).

1. *Appointmt of executors & trustees (c)*, p. 721, f. 2.

2. *Confirmation of marriage settlement*, p. 719, f. 5.

3. *Specific legacies to wife*, pp. 725 et seq.

4. *Immediate pecuniary legacy to wife*, p. 759, f. 8.

5, 6. *Gift of residue in trust for conversion & trust of proceeds as in Prec. IV.*, p. 864, clauses 6, 7.

7. My TRUSTS shll hold the residue of the same moys Upon such trusts & with & subj't to such powers & provons as are declared & contained in my marre settlem't of & concerning the proceeds of sale & conversion of the ppty thereby assned, or, "thrin recited to have been transferred," or, "the mtge debt & intt thrin recited to have been transferred" by the husbd to the trees of the sd settlem't or such of the same as shll be subsistg at my death (d) save & except that any reference to the trees contained in the sd settlem't shll be read as a reference to my trees & except that subj't to the trusts, powers & provons thrin contained in favour of my wife & chln (if any) Trusts of
residue
by refer-
ence to
marriage
settle-
ment.

(a) See Prec. VII, *post*, p. 868, for a will made in contemplation of a marriage and which upon solemnisation of the marriage is not revoked: L. P. Act, 1925, s. 177.

(b) This will (which is intended for execution immediately after marriage) need not contain an express revocation of former testamentary instruments all of which will have been revoked by the solemnisation of the marriage: Wills Act 1837, s. 18. *In the estate of J. B. Poole*, [1919] P. 10; *Re Paul*, [1921] 2 Ch. 1.

(c) The trustees of the testator's marriage settlement may conveniently be made trustees of the will.

(d) The fund so settled by the will is not a mere addition to the settlement funds; the will is a separate settlement, and must be construed as though the provisions of the settlement were repeated in it in full, the result of which may be to multiply charges: see *Re Beaumont*, [1913] 1 Ch. 325; cf. *Re Campbell's Trusts*, [1922] 1 Ch. 551. Where the ultimate trusts of a settlement were for the testator himself and took effect, and he made a gift by his will upon the same trusts, it was held that he died intestate as to the subject of the gift: *Re Powell*, [1918] 1 Ch. 407.

& to any & every exercise of such powers my trees shl stand possessed of the trust premes & the income throf In trust for all or any my brothers or brother, &c., *continue as at* p. 819, f. 1.

8. *Extension of statutory power of appropriation*, p. 883, f. 5.

9. *Power to professional trustee to charge*, p. 835, f. 10.

10. THE POWER of apptg new trees hrof shl be vested in my wife durg her life.

[11. *Nomination of trust corporation to receive notices*, p. 859, f. 18.]

Testimonium, p. 859, f. 1, *saying*, "immediately after my marre."

Attestation, p. 860, f. 5.

VII.

WILL of a MAN about to be MARRIED in FAVOUR of his INTENDED WIFE and the ISSUE of the MARRIAGE with GIFTS over if the MARRIAGE is not SOLEMNISED before a FIXED DAY (a).

Commencement, p. 718, f. 1, *using the words in the last set of brackets in that form & defining the intended wife as* "my wife."

1. *Appointment of executors & trustees*, p. 721, f. 2.

2. *Confirmation of marriage settlement*, p. 719, f. 5, *saying*, "Dated &c. & made etc." instead of "made on my marre."

3. *Specific legacies to wife*, pp. 725 et seq.

4. *Immediate pecuniary legacy to wife*, p. 759, f. 8.

5.-10. *Gift of residue in trust for conversion & trust of proceeds in favour of wife and children of intended marriage as in Prec. IV., ante*, p. 865, *clauses 6-11, mutatis mutandis*.

11. I HBY expressly declare that the bequests hrinbfe made to my wife & the trusts hrinbfe declared in favour of my wife & issue by her are conditional upon the solemnisation of a marre between us before the — day of — next & I declare that if no such marre shl have been solemnised on or before the

(a) See L. P. Act, 1925, s. 177. Provision should be made for the contemplated marriage not taking place before a fixed day. Should it take place after that day the gifts to and trusts in favour of the wife should be revived by a codicil.

sd — day of — my will shl be construed & have effect as if my wife had died in my lifetime.

12. IF THE bequest of *specific legacies* shl fail to take effect I bequeath the same to B.

13. IF THE trusts hrinbfe declared concerng the trust fund shl fail to take effect my trees shl hold the trust fund & the income throf in trust for C.

14. THE power of appointg new trustees hrof shl be vested in my wife so long as she shl be entitled to receive the income of the trust fund.

[15. *Nomination of trust corporation to receive notices*, p. 859, f. 18.]

Testimonium & attestation.

VIII.

WILL of a WIDOW in favour of an ONLY SON who is a
MINOR, with a GIFT OVER in the event of his DEATH
UNDER AGE. SHORT FORM.

Commencement, p. 718, f. 1.

1. *Appointmt of executors & trustees*, p. 721, f. 2.

2. *Appointmt of guardians*, p. 724, f. 11.

3. *Specific legacy of jewellery & wearing apparel, or such effects as it is desired to give specifically*. See pp. 725 *et seq.*

4. *General legacies*, pp. 757 *et seq.*

5. *General devise & bequest to trustees in trust for sale & conversion*, p. 781, f. 1, & p. 785, f. 1.

6. *Trust of proceeds of sale & conversion for paymt of debts, &c.*, p. 789, f. 3.

7. *Trust for investmt*, p. 791, f. 4.

Trust for
son at 21.

8. MY TREES shl stand possessed of the sd moys (weh with the investmts for the time being representg the same are hrinar called the trust fund) & the income throf IN TRUST for my son A. if & when he attains the age of twenty-one yrs, with power to my trees in their discron to apply any pt of the capl of the trust fund for the advancemt of my sd son durg his minority in such mner as they may think fit.

Trust in
default.

9. If MY sd son shl die whether in my lifetime or after my death under the age of twenty-one yrs, or shl die in my lifetime after attaing that age but witht leavg issue surviving me (b), then my trees shl hold the trust fund or so much throf as shl not have been applied or disposed of under the trusts or powers of this my will or by law vested in my trees UPON TRUST from & after the death of the survor of myself & my sd son to pay the income of the trust fund to my sister — durg her life & so that durg coverture the same shl be witht power of anticipon, & after her death UPON TRUST to raise & pay thereout the sum of £—— to each of my sisters — & — & to hold the ultimate residue of the trust fund IN TRUST for —.

10. *Investment clause*, pp. 829-830.

11. *Power to professional trustee to charge*, p. 835, f. 10.

[12. *Nomination of trust corporation to receive notices*, p. 859, f. 18.]

Testimonium & attestation, pp. 859-861.

WILLS DISPOSING OF PROPERTY IN TRUST FOR CONVERSION.

IX.

WILL giving LEGACIES and ANNUITIES and disposing of
REAL and PERSONAL PROPERTY, IN TRUST for CON-
VERSION and Payment of INCOME to WIFE for LIFE
or WIDOWHOOD with remainder IN TRUST for
CHILDREN with VARIATIONS. ULTIMATE TRUST for
TESTATOR'S BROTHERS and SISTERS. FULL FORM.

Commencement, p. 718, f. 1.

1. *Appointmt of executors & trustees*, p. 721, f. 2.

[2. *Appointmt of guardians*, p. 724, f. 11.]

[3. *Confirmation of marriage settlement*, p. 719, f. 5.]

(b) If the son were to attain twenty-one and leave issue, the gift would take effect under the Wills Act, 1837, s. 33. In practice provision is not usually made for the case of the son marrying under age.

- [4. *Indemnity to trustees of marriage settlement*, p. 856, f. 11.]
- 5. *Specific legacy to wife*, p. 725, f. 1.
- 6. *Other specific legacies*, pp. 725 *et seq.*
- 7. *Immediate pecuniary legacy to wife*, p. 759, f. 8.
- 8. *Other general legacies*, pp. 757 *et seq.*
- 9. *Annuities (c)*, pp. 773 *et seq.*
- 10. *Direction to appropriate fund to answer annuities*, p. 778, f. 16.
- 11. *General devise & bequest to trustees in trust for sale & conversion*, p. 781, f. 1, & p. 785, f. 1.
- 12. *Trust of proceeds of sale & conversion, for paymt of debts, &c.*, p. 789, f. 3.
- 13. *Trust for investment*, p. 791, f. 4.
- 14. *Life interest to wife or for widowhood*, p. 791, f. 1 [charged with maintenance of children, p. 795, f. 7].
- [15. *Trust for children or issue as wife shall appoint*, p. 796, f. 1, or p. 798, f. 3.]

(c) The following form, providing for the event of disclaimer by a married woman of an annuity given to her subject to a restraint on anticipation, may sometimes be found useful. A married woman may disclaim a gift of personal property, even though it is subject to a restraint on anticipation: *Re Wimperis*, [1914] 1 Ch. 502.

“(i.) IF any woman to whom an annuity is hereby given subject to a restraint on anticipation shall disclaim the same, my trustees shall pay or apply all or any part of such annuity to or for the personal support or benefit of all or any one or more of the following persons, namely the husband & issue (if any) for the time being in existence of any such woman & the person or persons for the time being interested in my residuary estate under the trusts herein declared to take effect after the death of any such woman in such shares & manner as my trustees shall from time to time in their absolute discretion think proper.

(ii.) Subject to such discretionary trust my trustees shall during the period of twenty-one years from my death, if such woman shall so long live, set aside the parts (if any) of such annuity as shall not be so paid or applied & accumulate the same at compound interest by investing the same & the resulting income thereof in any investments hereby authorised, & at the end of the period of accumulation shall hold the accumulated fund & also the unapplied part of the annuity during the remainder of the life of such woman IN TRUST for —.”

16. *Trust for children of testator at 21 or marriage*, p. 798, f. 4; or at 21 or marriage with consent, p. 798, f. 5; or excluding daughters marrying without consent, p. 799, f. 6, or including those dying in testator's lifetime leaving issue, p. 801, f. 12, or substituting issue of children dying in testator's lifetime for their parents (a), p. 803, f. 18, or for children unequally, p. 806, ff. 22 or 23.

[17. *Hotchpot clause*, p. 806, f. 24, with variation in note (b) on p. 806, if required.]

[18. *Provision that sums taken under marriage settlement shall be brought into hotchpot*, p. 807, f. 26.]

[19. *Provision that advances made to children by testator in his lifetime shall be brought into hotchpot*, p. 808, f. 27.]

[20. *Maintenance & accumulon for children or grandchildren where income applicable as a common fund*, p. 825, f. 1 (b).]

[21. *Power to keep up house for infants*, p. 828, f. 17.]

22. *Ultimate trust for brothers & sisters of testator*, p. 819, f. 1, or as the case may be.

23. *Investment clauses*, pp. 829-830.

[24. *Power to take purchased leaseholds in name of beneficiary*, p. 546, f. 13, *mutatis mutandis*.]

25. *Extension of statutory power of appropriation*, p. 833, f. 5.

26. *Power to settle questions & apportion blended funds*, p. 834, f. 9.

27. *Power for professional trustee to charge*, p. 835, f. 10.

[28. *Power to majority of trustees to act*, p. 836, f. 14.]

29. *Power to appoint new trustees*, p. 852, f. 1, or f. 2.

[30. *Nomination of trust corporation to receive notices*, p. 859, f. 18.]

[31. *Marginal notes not to form part of will*, p. 859, f. 20.]

Testimonium & attestation, pp. 859-861.

(a) An alternative method of obtaining this object is to use the ordinary form of trust for children at 21, &c., as at p. 798, f. 4, and to add the proviso substituting issue of deceased children, p. 805, f. 20.

(b) As to the statutory power of maintenance, see *ante*, p. 526, note (e).

X.

WILL giving ANNUITY to TESTATOR'S WIFE and SPECIFIC and RESIDUARY BEQUESTS to his two CHILDREN, one of whom is a MINOR, with a GIFT OVER on his DEATH under 21 to the OTHER. POWER to POSTPONE calling in a DEBT.

Commencemt, p. 718, f. 1.

1. *Appointmt of executors & trustees*, p. 721, f. 2.

[2. *Appointmt of guardians*, p. 724, f. 11.]

3. *Specific legacy of personal effects, &c., to wife*, pp. 725 et seq.

4. *Specific legacies to B. & C., the children*, pp. 725 et seq.

5. *Immediate pecuniary legacy to wife*, p. 759, f. 8.

6. *Gift of annuity to wife*, p. 775, f. 3. "AND I authorise my exor to pchase an annuity from Govt or some public Co in the name of my wife to satisfy the annuity hrinbfe given to her." Power to purchase annuity (c).

7. *Power to postpone callg in of debt*, p. 834, f. 7.

8. *Gift of residue to "my trees,"* p. 781, f. 1, "in trust for B. & C. absolutely in eql shares but if the sd C. shl survive me & afterwards die under the age of twenty-one yrs & witht issue, then my trees shl hold the share of my real & residuary psonal este hrinbfe given to the sd C. in trust for sd B. absolutely; AND IF either of them the sd B. & C. shl die in my lifetime witht leavg issue survivg me, then my trees shl hold the share in my real & psonal este hrinbfe given in trust for the one of them so dying in trust for the other of them, if he shl survive me or shl die in my lifetime leavg issue survivg me, absolutely." Gift over on death of son under 21, and on death of either son in testator's lifetime.

9. IF I shl die bfe the sd C. shl attain the age of twenty-one yrs, my trees shl invest the psonal este hrinbfe bequeathed to the sd C. in or upon any investmts hby authorised with power to vary or transpose such investmts at discreon. Investment of share of minor.

10. MY TREES may durg the minority of the sd C. & durg such period or periods as there shl be no properly constituted guardians of the sd C. exercise at their discretion the powers of consentg to an appropriation conferred by statute upon the guardians of an infant (d). Power to agree to appropriation.

(c) If the annuitant is restrained from anticipation, the direction should be for purchase in the name of "my trees" as at p. 779, f. 17.

(d) See A. E. Act, 1925, s. 41 (1) (ii).

Advance-
ment (e).

11. MY TREES may raise by mtge or sale any sum or sums not exceedg in the whole the sum of £—— out of the real & psonal ppty hby given in trust for the sd C., & pay or apply the same for his advancemt or benefit durg minority as my trees shl think fit.

12. *Investment clause*, pp. 829-830.

Appoint-
ment
of S. L.
Act
trustees.

13. I APPT my trees to be trees for the pposes of the S. L. Act, 1925 (f).

14. *Power to professional trustee to charge*, p. 835, f. 10.

15. *Interpretation of "trustees,"* p. 980, f. 22.

[15.] *Nomination of trust corporation to receive notices*, p. 859, f. 18.]

Testimonium & attestation, pp. 859-861.

XI.

WILL giving LEASEHOLDS in TRUST for a SISTER and her ISSUE, a PECUNIARY LEGACY IN TRUST for ANOTHER SISTER and her ISSUE, and RESIDUE in TRUST for ANOTHER SISTER and her ISSUE. GIFT of PECUNIARY LEGACIES to be INCREASED in PROPORTION to VALUE of ESTATE.

Commencement, p. 718, f. 1.

1. *Appointment of executors & trustees*, p. 721, f. 2, & of trustees for the purposes of the S. L. Act, p. 852, f. 3.

2. *Specific legacies*, pp. 725 et seq.

Bequest
of lease-
holds —
to sister
for life,

3. *Bequest of leasehds to trustees upon trust to pay outgoing*s, p. 746, f. 2, saying " & upon the further trusts following, that is to say " :—

(i.) My trees shl during the life of my sister A. [the wife of K. of ——] pay the surplus or net rents & profits of the same premes to my sd sister witht power of anticipon.

— to
sister's
husband
if surviv-

(ii.) After the death of my sd sister my trees shl pay the sd net rents & profits to any husbd who may survive her or permit

(e) The statutory power of advancement may not apply to the land in the event which happens : see T. Act, 1925, s. 32 (2).

(f) See S. L. Act, 1925, s. 102.

him personally to occupy & manage the sd leasehd premes during his life. ing for life,

(iii.) After the death of my sd sister A. & her surviving husbd (if any) my trees shl hold the sd leasehold premes & the future net rents & profits throf IN TRUST, &c., *continue power of appointmt to sister among her children & issue*, p. 811, f. 6, *mutatis mutandis*, & *trust in default of appointmt (a)*, p. 812, f. 7, *mutatis mutandis*. — to sister's children, &c., as she appoints, in default, equally,

(iv.) If the trusts hrinbfe declared concerning the sd leasehd premes shl fail, &c., *continue trust for sister's appointees as at* p. 812, f. 9, *adding at the end of the form*, “ & in default of & subjt to any such apptmt the sd leasehd premes shl sink into & form pt of my residuary este.” — in default of issue, for sister's appointees.

[4. *Direction that bequest shall be free of duty*, p. 748, f. 8].

5. *Gift of pecuniary legacies*, p. 757, f. 2. AND I DECLARE that if my este (other than reversionary ppty not producing income) shl at my death (after paymt of my funeral & testy expenses including for the purpose of this provision all este duty leviable at my death in respect of all or any part of my este whether real or personal & debts) exceed in value the sum of £—— & be less than £——, then each of the sd legacies shl be increased by one-third, & that if my este shl exceed in value the sum of £——, then each of the sd legacies shl be doubled. Pecuniary legacies to increase in proportion to estate.

6. *Other general legacies*, pp. 757 *et seq.*

7. I GIVE to my trees the sum of £—— [free of all duty leviable or chargeable at my death (b)] upon the trusts hrinar declared concerng the same, that is to say:— Legacy in trust for another sister and her issue.

(i.) My trees shl invest the sd sum of £—— in the names of my trees in or upon any of the investmts hby authorised, with power with the consent of my sister B. to vary or transpose such investmts for or into others of a nature hby authorised.

(ii.) My trees shl pay the income of the sd sum of £—— & the ppty for the time being representing the same (hrinar called the settled legacy) to my sister B. during her life, & so that during coverture the same shl be witht power of anticipon.

(iii.) After the death of my sd sister B. my trees shl stand possed of the capital & future income of the settled legacy IN

(a) For hotchpot and advancement clauses, see *infra*, ff. 15 and 16.

(b) See *ante*, p. 758, note (f).

TRUST, &c., *continue power of appointmt to B. among her children or issue*, p. 811, f. 6, *mutatis mutandis*, & *trust in default*, p. 812, f. 7, *mutatis mutandis*.

(iv.) *Power to B. to appoint life interest to surviving husband (c)*, p. 813, f. 12, (i.)-(iv.).

(v.) If the trusts hereinbefore declared concerning the settled legacy sh^l fail then, &c., *continue ultimate trust as B. shall appoint and in default for the persons entitled on her intestacy*, pp. 812, 813, ff. 9 & 11.

Gift of
residue in
trust for
another
sister and
her issue.

8. *General devise & bequest to trustees in trust for sale & conversion*, p. 781, f. 1, & p. 785, f. 1.

9. *Trust of proceeds of sale & conversion*, p. 789, f. 3.

10. *Trust for investment "with the consent of my sister C."*, p. 791, f. 4.

11. *Life interest to C.*, p. 791, f. 1.

12. AFTER THE death of my sd sister C. my trees sh^l pay the income of the trust fund to any husbd whom she may leave surviving during his life.

13. AFTER THE death of my sd sister C. & her surviving husbd (if any) my trees sh^l stand possed of the capital & future income of the trust fund IN TRUST, &c., *continue trust for children of C. excluding child taking estate*, p. 805, f. 21.

14. *Ultimate trust of "the trust fund" as C. shall appoint*, p. 812, f. 9, *and in default for "D. of, &c., absolutely."*

Hotchpot
clause.

15. No CHILD of the sd A., B. or C. who or whose issue sh^l take any pt of the settled leasehds, the settled legacy or the trust fund resply under an apptmt by virtue of any power hereinbefore contd, sh^l in default of apptmt, &c., *continue as at* p. 525, f. 17.

Advance-
ment.

16. The staty power of advancemt sh^l apply to the sd leasehd ppties settled in favour of A. & her issue as if the same were held upon trust for sale.

17, &c. *Add such of clauses 23-31 of Prec. IX.*, p. 872, *as may be required, omitting the power to appoint new trustees.*

Testimonium & attestation, pp. 859-861.

(c) This is preferable to giving a second life interest to a surviving husband.

XII.

WILL disposing of REAL and PERSONAL PROPERTY in TRUST for CONVERSION, the WIFE taking a LIFE INTEREST in the WHOLE DETERMINABLE as to ONE MOIETY on her MARRYING AGAIN with REMAINDER to CHILDREN at 21, &c. SETTLEMENT of DAUGHTERS' SHARES, the TRUSTS of the shares being declared TOGETHER (d).

Commencement & clauses down to & including trust for investmt, as in Prec. IX., pp. 870, 871.

14. Life interest to wife reducible on re-marriage, p. 792, f. 2.

15. Trust for children of testator at 21, &c., p. 798, f. 4, using variation in note (a) on p. 796.

16. Commencement of trusts of daughters' shares, p. 810, f. 1.

17. Life interest to daughter, p. 811, f. 2.

18. Power of appointment among children, &c., p. 811, f. 6, & trust in default, p. 812, f. 7.

Settle-
ment of
daugh-
ters'
shares.

19. Hotchpot clause, p. 812, f. 8.

20. Power to daughter to appoint life interest to surviving husband, p. 813, f. 12.

21. Ultimate trusts of daughter's share, p. 812, f. 9, & accruer clause in default of appointment, p. 813, f. 10, or trust for next of kin in default of appointment, p. 813, f. 11.

22. Trusts of share of daughter dying in testator's lifetime, p. 815, f. 16.

23. Trusts of share of son dying in testator's lifetime, p. 816, f. 17.

24, &c. Add such of clauses **23-31** of Prec. IX., p. 872, as may be required.

Testimonium & attestation, pp. 859-861.

(d) For the mode of declaring the trusts where the shares are settled differently, see Prec. XIII., p. 878.

XIII.

WILL disposing of REAL and PERSONAL PROPERTY in
TRUST for CONVERSION. SETTLEMENT of RESIDUE in
EQUAL SHARES on BROTHERS and SISTERS by NAME
and their ISSUE with VARIATIONS. ACCRUER CLAUSE.

Commencement, p. 718, f. 1.

1. *Appointment of executors & trustees*, p. 721, f. 2.

2. *Specific legacies*, pp. 725 *et seq.*

3. *General legacies*, pp. 757 *et seq.*

4. *Annuities*, pp. 773 *et seq.*

5. *Direction to appropriate fund to answer annuities*, p. 778,
f. 16.

6. *General devise & bequest in trust for sale & conversion*,
p. 781, f. 1, & p. 785, f. 1.

7. *Trust of proceeds of sale & conversion*, p. 789, f. 3.

Trust of
residue
for
brothers
and
sisters.

8. MY TREES shl stand possessed of the residue of the sd moys
IN TRUST for my brothers & sisters, K. L. M. N. & O., in eql
shares PROVD that the share in the sd residuary moys hrinbfe
given to a brother or sister of mine shl not vest in him or her
absolutely, but shl be retained by my trees Upon the trusts
hrinar declared concerning the same.

Trust for
invest-
ment.

9. MY TREES shl invest the share in the sd residuary moys
hrinbfe given in trust for a brother or sister of mine, but durg
his or her lifetime if of full age not witht his or her consent,
in or upon any of the investmts hby authorised, with power
with such consent as afsd durg the lifetime if of full age of
such brother or sister to vary or transpose such investmts for
or into others of a nature hby authorised.

Trusts of
share for
brother
and his
issue.

10. (i.) MY TREES shl pay the income of the share in the sd
residuary moys hby given to my brother K. & the ppty for the
time being representing the same (hrinar called K.'s share) to
the sd K. during his life.

(ii.) After the death of the sd K. my trees shl stand possessed
of the capital & future income of K.'s share IN TRUST, &c.,
continue power of appointmt among children or issue, p. 797,
f. 2, & *trust in default*, p. 798, f. 4.

(iii.) *Hotchpot clause*, p. 806, f. 24.

Trusts of
share for

11. MY TREES shl hold the share in the sd residuary moys
hby given to my brother L. & the ppty for the time being

representing the same (hrinar called L.'s share) & the income throf Upon the like trusts & subjt to the like powers & provons in favour of the sd L. & his chln & remoter issue & orwise as are hrinbfe declared concerng K.'s share & the income throf, in the same mner as if such trusts powers & provons were hrin repeated with the substitution of the name of the sd L. for that of the sd K.

another brother by reference.

12. *Trusts of share of another brother M. by reference, as in the case of L. "save & except that":—*

(i.) *Life interest determinable on bankruptcy, &c., proviso for cesser of forfeiture, &c., p. 792, f. 4, (i.)—(v.), saying, "The life intt hby given to the sd M. in M.'s share."*

Trusts of share for another brother by reference with variations.

(ii.) After the death of the sd M. my trees shl pay the income of M.'s share to X. his psnt wife if surviving durg her life, & so that durg coverture the same shl be wtht power of anticipon.

13. (i.) MY TREES shl pay the income of the share in the sd residuary moys hby given to my sister N. & the ppty for the time being representing the same (hrinar called N.'s share) to the sd N. during her life, & so that durg coverture the same shl be wtht power of anticipon.

Trusts of share for sister, her husband and issue.

(ii.) After the death of the sd N. my trees shl pay the income of N.'s share to any husbd whom she may leave survivg durg the life of such husbd.

(iii.) After the death of the sd N. & her survivg husbd (if any) my trees shl stand possed of the capital & future income of N.'s share IN TRUST, &c., *continue power of appointmt among chln or issue*, p. 811, f. 6, & *trust in default*, p. 812, f. 7.

(iv.) *Hotchpot clause*, p. 812, f. 8.

14. *Trusts of share of another sister, O., by reference to trusts for, "the sd N. her husbd & issue & orwise," as in clause 11, supra, mutatis mutandis, "save & except that from & after the death of the sd O. my trees shl hold O.'s share & the income throf IN TRUST for such pson or psons & for such pposes as the sd O. shl while discovert by any deed or deeds revocable or irrevocable or whether covert or discovert by will or codl appt, & that the trusts in favour of the husbd & issue of the sd O. shl take effect only in default of & subjt to any such apptmt."*

Trusts of share for another sister by reference with variations.

[15. IF ANY of my sd brothers & sisters shl die in my lifetime leavg issue or a wife or husbd living at my death, the

share herein given to him or her sh^l be held upon & for the same trusts & pposes as if he or she had survived me & died immedly after me.]

Accruer
clause.

16. IF THE trusts herein declared concerning the share of any brother or sister of mine sh^l fail or determine, such share & any additional share, &c., *continue as at p. 813, f. 10, mutatis mutandis.*

17, &c. *Add such of clauses 23-31, Prec. IX., p. 872, as may be required.*

Testimonium & attestation, pp. 859-861.

XIV.

WILL of TRADER bequeathing BUSINESS or SHARE of BUSINESS to ELDEST SON. GIFT of RESIDUE to TRUSTEES in trust for CONVERSION, &c. TRUST to pay ANNUITY to WIDOW and to raise ANNUAL SUM for benefit of an IMPROVIDENT SON. TRUST of RESIDUE subject to Annuity, &c., for CHILDREN OTHER than the ELDEST and IMPROVIDENT SONS. POWER to LEND trust funds to ELDEST SON.

Commencement & clauses down to & includg trust for investmt as in Prec. IX., pp. 870, 871, adding bequest to K. the eldest son, of testor's business or share in business (a), pp. 748, 749, ff. 1 or 2, & appointmt of him to be special executor, p. 722, f. 6.

14. MY TREES sh^l out of the income of the trust fund pay to my wife durg her life an annuity of £—— [free of duty [& of income tax (b) but not of super tax]] witht power of anticipon to begin, &c., *continue as at p. 773, f. 1.*

Trust for
younger
children
except
improvi-
dent
child.

15. SUBJT to the paymt of the sd annuity & to the proven hrinar made for my son L., my trees sh^l stand possed of the trust fund & the income throf IN TRUST for all or any my chln or child, other than the sd K. & the sd L., who being male

(a) It will often be desirable to give the son a legacy so that he may have some ready money for business purposes.

(b) See *ante*, p. 773, note (c).

attain the age of twenty-one yrs or being female attain that age or marry, if more than one in eql shares.

16. If I shl have no child other than as afsd, who being male attains the age of twenty-one yrs or being female attains that age or marries, then my trees shl hold the trust fund & the income throf IN TRUST for the sd K. absolutely. Ultimate trust.

17. Power to raise & pay annual sum for benefit of L., p. 777, f. 15.

18. Power to appropriate fund to answer "the annuity hrinbfe given to my wife & the annual sums for the time being raisable under the power lastly hrinbfe contd," p. 778, f. 16, saying, instead of "such annuity," "such annuity & annual sums."

19, &c. Add such of clauses **23-31** of *Prec. IX.*, p. 872, as may be required, adding to the investment clause power to lend trust moneys to K. for the pposes of the business, p. 830, f. 6.

Testimonium & attestation, pp. 859-861.

XV.

WILL of a PARTNER giving POWERS to TRUSTEES relating to BUSINESS. GIFT of RESIDUE to TRUSTEES in trust for CONVERSION, &c. USUAL TRUSTS of RESIDUE for WIDOW and CHILDREN, with SETTLEMENT of SHARE of IMPROVIDENT SON.

Commencement & clauses 1-26 as in Prec. IX., pp. 870-872.

21. THE SHARE in the trust fund hrinbfe given to my son L. shl in default of apptmt to the contrary not vest absolutely in him but shl be retained by my trees Upon the trusts following, that is to say:— Settle-
ment of
share of
improvi-
dent son.

(i.) My trees shl from time to time durg the life of my son L., &c., continue as at p. 818, f. 21, saying, "the sd share," & substituting for sub-clause (iv.) the following ultimate trust:

(iv.) If the trusts hrinbfe declared concerning the sd share shl fail or determine, such share & the income throf, or so much throf respaly as shl not have been applied or disposed of under the trusts & provons afsd, shl accrue & be added to the share or shares of my other chln or child in the trust fund, & if more than one in eql shares & proportions."

22. *Power to trustees to continue business, &c.*, p. 750, f. 4, or p. 753, f. 5.

23. *Power to make arrangements for admission of sons "other than the sd L." into business*, p. 755, f. 9, or, *Option to sons in succession*, "other than the sd L." to succeed to business, p. 756, f. 10, or, *Power to reserve right of introducing sons "other than the sd L." at 21 into business*, p. 756, f. 11.

24. &c. *Add such of clauses 23-31 of Prec. IX.*, pp. 872, 994, as may be required.

Testimonium & attestation, pp. 859-861.

XVI.

WILL of a TRADER giving BUSINESS to ELDEST SON charged with benefits for TESTATOR'S WIFE and CHILDREN, WITHOUT TRUSTEES. DIRECTION that the SON shall SECURE such benefits by DEED OF COVENANT. GIFT of RESIDUE to WIFE absolutely.

Commencement, p. 718, f. 1.

1. *Appointmt of executors*, p. 720, f. 1.

[2. *Appointmt of guardians*, p. 724, f. 11.]

3. *Bequest of business to eldest son A.*, p. 748, f. 1, & *appointmt of him to be special executor*, p. 772, f. 6.

4. THE BEQUEST of my business & premes hrinbfe made to my sd son A. is made on the followg express condons, that is to say :—

(i.) My sd son shl pay to my wife durg her life an annuity, &c., *continue as at p. 773, f. 1.*

(ii.) If I shl have any child or chln other than the sd A. who being male attain the age of twenty-one yrs or being female attain that age or marry, the sd A. shl pay the sum of £—— to each such child by eql yrly instalmts of £—— each, the first instalmt to be pd to each son on his attaining the age of twenty-one yrs & to each daur on her attaining that age or marrying, except that if any such child shl attain the age of twenty-one yrs or being female marry bfe the expiron of one yr from my death, such instalmt shl be pd at the expiron of one yr from my death, & subsequent instalmts shl be pd at

Gift of
business.

Provi-
sions to
be made
out of
business
Annuity
to wife.

Capital
sum for
children
payable
by instal-
ments.

intervals of a yr until the sd ppal sum of £—— shl be fully pd & satisfied.

(iii.) My sd son shl pay intt at the rate of £—— p.c. p.a. on so much of such respective ppal sums as shl for the time being remain unpaid, such intt to commence from the day hrinbfe appted for the paymt of the first instalmt of ppal & to be pd togr with the instalmts of ppal. Interest on capital sums.

(iv.) During the minority of each son of mine & the minority & spinsterhood of each daur of mine, my sd son shl pay such sum or sums of moy, not exceeding for each child in any one yr intt at the rate afsd on his or her expectant portion, as the guardians or guardian of such child shl require in writing, such sum or sums to be pd to such guardians or guardian & to be applied in such mner as they he or she shl think fit for the maintenance educon or benefit of such child. Maintenance.

(v.) My sd son shl pay to such guardian or guardians such further sum or sums of moy not exceeding in the whole a moiety of the expectant portion of such child as such guardian or guardians shl require in writing, such sum or sums to be applied by them him or her for the advancemt or benefit of such child, but so that such sum or sums shl be taken in pt satisfon of the expectant portion of such child if the same shl become payable & as a paymt by anticipon *pro tanto* of the first instalmt or instalmts throf. Advancement (a).

(vi.) My sd son his exs or ads shl within six calr months after my death at the expse of my este enter into a pper deed of covt with my exs & to their satisfon for securing the paymt of the annuity & ppal sums & intt & other moys hby directed to be pd by him or them unto or for the benefit of my wife & my other chln. Covenant to be entered into to secure annuity, &c.

5. *General legacies*, pp. 757 *et seq.*

6. *Gift of residue to wife absolutely*, p. 781, f. 1.

7. *Power for professional trustee to charge*, p. 835, f. 10.

Testimonium & attestation, pp. 859–861.

(a) This clause should be omitted or modified if the eldest son would be embarrassed by having to comply with the guardians' requirements.

XVII.

WILL disposing of REAL and PERSONAL ESTATE in trust for CONVERSION. SETTLEMENT of PROCEEDS of conversion on TESTATOR'S CHILDREN, GRANDCHILDREN, and GREAT-GRANDCHILDREN as far as the law of PERPETUITY will permit (a).

Commencemt, p. 718, f. 1.

1. Appointmt of executors & trustees, p. 721, f. 2.

[2. Appointmt of guardians, p. 724, f. 11.]

3. Specific legacies, pp. 725 et seq.

4. General legacies, pp. 757 et seq.

5. General devise & bequest to trustees in trust for sale & conversion, p. 781, f. 1, & p. 785, f. 1.

6. Trust of proceeds of sale & conversion for paymt of debts, &c., p. 789, f. 3.

7. Trust for investmt, p. 791, f. 4.

Trust for
division
among
children.

8. MY TREES shl stand possed of the capl & income of the trust fund IN TRUST to divide the same into — egl shares & to appropriate one of such shares to each of my chln now livg, whether such child shl survive me or not, & one share to my deced daur —, & so that any reference hrinar contained to the shares of my respective chln in the trust fund shl be deemed to apply & have reference to the shares hrinbfe directed to be appropriated to them resply, whether they shl resply survive me or not.

Declara-
tion of
trust of
shares.

9. THE SHARES so directed to be appropriated to my sd respective chln shl not vest absolutely in them or their repves, but shl be retained by my trees & held Upon the trusts hrinar declcd concerng the same resply.

Son or
daughter
for life.

10. MY TREES shl hold the share of each of my sons in the trust fund UPON TRUST, if, &c., *continue protected life interest*,

(a) This Precedent is adapted to the case of a testator advanced in years with a grown up family of children and grandchildren, who desires to tie up his property for as many generations as possible, and will serve to indicate the limits allowed by the rule against perpetuities, the trusts being carefully restricted so that the vesting can in no case be postponed beyond lives in being and 21 years afterwards.

see p. 792, f. 4. AND shl stand possed of the share of each daur of mine in the trust fund UPON TRUST durg the life of such daur to pay the income of such share to her, & so that durg coverture the same shl be witht power of anticipon.

11. MY TREES shl hold the share of each of my sd sons & daurs in the trust fund from & after his or her death, or from & after my death as to any son or daur predeceasg me; UPON TRUST to appropriate such share unto such chln or child of the son or daur of mine to whom such share shl have been origly appropriated as afsd as shl be livg at my death or born afterwards, or shl have died in my lifetime leavg issue survivg me, if more than one in eql shares; PROV'D ALWAYS that each of my sd sons & daurs who may survive me may at any time by deed revocable or irrevocable or by will or codl alter in any mner & to any extent he or she may think fit the shares in wch the afsd share of such son or daur in the trust fund shl after his or her death be appropriated to his or her chln if more than one as lastly hrinbfe provd, but it shl not be competent to such son or daur to alter in any respt the trusts upon wch the shares or share so appropriated to his or her chln or child are or is to be held as hrinar provd.

Remainder for his or her children.

12. ANY REFERENCE hrinar contained to the share of any grandchild of mine shl be deemed to apply & have reference to the share appropriated to such grandchild as afsd, whether he or she shl survive me or not.

13. THE SHARE of any grandson of mine who shl have been born in my lifetime shl not vest absolutely in such grandson or his repves, but whether he shl survive me or die in my lifetime leavg issue survivg me shl be retained by my trees & held by them Upon the trusts hrinar declared concerng the same, that is to say, Upon trust to pay the income throf to such grandson if survivg me durg his life, & after his death or after my death as to any grandson predeceasing me, &c., *continue trust for issue of grandson as he shl appoint, & trust in default*, p. 797, f. 2, & p. 798, f. 4, & if the trusts hrinbfe declared concerng the share of such grandson shl fail, then subj't & witht prejudice to the trusts hrinbfe declared concerng such share, the same shl be held IN TRUST for such pson or psons & for such pposes as such grandson shl by will or codl appt, and in default of & subj't to any such apptmt the same shl

Declaration of trust of shares of grandsons born in testator's lifetime for them for life remainder to issue.

In default as they appoint by will.

In default to accrue. be held Upon the trusts & in the mner upon & in weh the same wd have been held if such grandson had never existed.

Shares of grand-daughters so born. **14.** THE SHARE of the trust fund hrinbfe directed to be appropriated to any granddaur of mine who shl have been born in my lifetime (whether she shl survive me or die in my

Upon trust for them and their issue and appointees. lifetime leavg issue survivg me as afsd), shl be held by my trees Upon the like trusts so far as capable of takg effect for such granddaur durg her life (but with the substiton of a life intt witth power of anticipon for a simple life intt), & after her death or my death as the case may be for her issue, & with the like power to her of apptmt among her issue, & the like power to her of testy apptmt on failure of the prior trusts as

In default to accrue. of mine who shl have been born in my lifetime, & in case of the failure of the trusts hrinbfe declared concerng the share of such granddaur & subjt thereto so far as capable of takg effect, the share of such granddaur shl be held Upon the like trusts & in the like mner as if such granddaur had never existed.

Trusts of shares of after-born grand child. **15.** THE SHARE of the trust fund hrinbfe directed to be appropriated to any grandson of mine who shl be born after my death shl not (except in the event & to the extent hrinar expressly mentd) vest absolutely in such grandson but shl be retained by my trees & held by them Upon the trusts hrinar declared concerng the same resply, that is to say, UPON TRUST

For grand-child and his issue with restriction as to perpetuities. to pay the income throf to such grandson until his death, or until the death of the last survor of such of my chln & grandchln as shl be born in my lifetime (wchever of such events shl first happen), & if such grandson shl be livg at the death of the last survor of such chln & grandchln of mine as last afsd, then Upon trust to pay & transfer the capl of such share to such grandson for his absolute benefit, but if such grandson shl predecease such last survor, then from & after the death of such grandson the capl of such share shl be held Upon the like trusts for the benefit of the issue of such grandson, & with the like power to him of apptmt among such issue, & the like power to him of testy apptmt on failure of the prior trusts as are hrinbfe declared & contained concerng the share of any grandson of mine who shl be born in my life-

time (b), & in case of the failure of the trusts herein declared concerning the share of any grandson of mine born after my death such share shall be held Upon the like trusts & in the like manner as if such grandson had never existed.

In default
to accrue.

16. THE SHARE of the trust fund herein directed to be appropriated to any granddaur of mine who shall be born after my death shall be held Upon the like trusts for the benefit of such granddaur & her issue & appointees as are herein declared concerning the share of any grandson of mine born after my death, but so that any intt in the income of such share to which such granddaur may be entitled shall during coverture be with power of anticipation, & in case of the failure of such trusts & subject to the same so far as taking effect, such share shall be held Upon the like trusts & in the like manner as if such granddaur had never existed.

As to
shares of
after-
born
grand-
daughters
on like
trusts as
settled
half of
shares of
after-
born
grand-
sons.

17. IF THE trusts herein declared concerning the share of any of my said child in the trust fund shall fail, then subject & without prejudice to the trusts herein declared concerning such share so far as the same shall take effect, the same share, including any further share which may accrue or be added thereto under this present provision, shall accrue & be added to the original shares in the trust fund herein directed to be appropriated to my other child after death (whether surviving me or not) in equal proportions, & the share or shares which shall so accrue to my said respective child shall be held Upon the like trusts as are herein declared concerning their respective original shares so far as capable of taking effect.

Ultimate
trust for
accruer.

18, &c. *Investment & other usual clauses, see Prec. IX., pp. 872.*

Testimonium & attestation, pp. 859-861.

(b) The rule against limiting an interest in land to an unborn person for his life with remainder to his child or children has been abolished by s. 161 of the L. P. Act, 1925. It never did apply to personal estate: *Re Bowles*, [1902] 2 Ch. 650. As to the form of statement of the old rule, see *Re Nash*, [1910] 1 Ch. 1; *Re Bullock*, [1915] 1 Ch. 493; *Re Garnham*, [1916] 2 Ch. 413.

WILLS INCLUDING FOREIGN PROPERTY.

XVIII.

WILL of PERSONAL PROPERTY, and REAL ESTATE situate in ENGLAND and in a COLONY, PROVIDING for WIFE by a bequest in trust of a LEASEHOLD HOUSE and FURNITURE, and LIFE ANNUITY. LEGACIES to CHILDREN at 21 with interim MAINTENANCE. GIFT of RESIDUE IN TRUST for CONVERSION, the proceeds being SETTLED on the TESTATOR'S MALE ISSUE, with POWER to MALE TENANTS for LIFE to CHARGE ANNUITIES for their WIDOWS and PORTIONS for their YOUNGER CHILDREN. ULTIMATE TRUST for TESTATOR'S DAUGHTERS (a).

Commencement, p. 718, f. 1.

1. *Appointmt of executors & trustees*, p. 721, f. 2.

[2. *Appointmt of guardians*, p. 719, f. 11.]

3. *Declaration as to domicile*, p. 719, f. 6.

4. *Specific legacies*, pp. 725 et seq.

Gift of
house and
furniture.

5. *Bequest of leasehold house & furniture to wife for life*, p. 747, f. 4, & after her death, "on the trusts herein declared concerning the investmts of my residuary este & the income thereof."

6. *Direction that bequest of leaseholds shall be free of duty*, p. 748, f. 8.

Entailing
land in a
colony.

(a) If the testator's real estate is in a colony where the English law of entail prevails, the scheme of settling the property on the eldest son would be best effected by devising the land in strict settlement, and giving the personalty on similar trusts. In any case an entail might in general be created by a devise in trust for sale and for reinvestment in the purchase of land in England to be entailed; but it would be desirable to inquire into the *lex loci situs*: see *infra*, pp. 896, 897, note.

Trust for
conversion.

In a will dealing with land in a colony not given absolutely, a trust for conversion should in general be inserted, so that the proceeds may be disposed of according to English law, and questions as to the application of colonial law may as far as possible be excluded; and express powers of management and leasing, &c., until sale should be inserted.

See also Precedents XIX. and XX., *post*, and p. 896, note as to wills affecting land abroad.

7. *Specific devises*, pp. 736 *et seq.*
8. *Direction that devises shall be free of duty*, p. 744, f. 25.
9. *Immediate pecuniary legacy to wife*, p. 759, f. 8.
10. *Legacy to testator's younger children at 21, &c.*, p. 761,
- f. 16, saying, "such of my chln except K."
11. *Annuity to wife for life*, p. 775, f. 3.
12. *Direction to appropriate fund to answer annuity*, p. 778,
- f. 16.
13. *General devise & bequest to trustees in trust for sale & conversion*, pp. 781, f. 1, & p. 785, f. 1, saying, "all my estes situated in the Colony of — & all other my real & immovable estes & ppty of every tenure (including leasehds) whether situate in the United Kingdom of Gt. Britain & N. Ireland or any Colony or Dependency throf." Residu-
ary gift.
- [14. *Power to K. if he is a trustee to purchase*, p. 825, f. 14.]
15. *Trust of proceeds of sale & conversion*, p. 789, f. 3.
16. *Trust for investmt*, p. 791, f. 4, saying, "with the consent in writing of the pson or psons of full age (if any) for the time being entitled to the income of the sd moys (weh moys & the ppty for the time being represtg the same are hrinar called the trust fund), & if there shl be no such pson at the discron, &c." Trust for
invest-
ment.
17. "MY TREES shl stand possed of the trust fund," *continue as in f. 7, p. 838, limitg the fund in strict settlemt addg the limitations in the next succedy forms if desired.* Strict
settle-
ment of
trust
fund.
18. (i.) EVERY SON of mine to whom a life intt in the trust fund is hby given may, either bfe or after he shl become entitled to the receipt of the income throf in posson, but subjt & witht prejudice to the trusts & powers preceding his life intt & to the interests created in exercise of such powers, either bfe or after his marre by any deed or deeds revocable or irrevocable or by will or codl appt unto or for the benefit of his wife in the event of her surviving him, for her life or any less period, an annuity of £—— or any less annuity, to be charged upon the whole or any pt of the trust fund & to be payable either subjt to or free from death duties at such times & in such mner as such son may think fit. Power to
each son
to charge
annuity
for his
wife.
- (ii.) This psnt power may be exercised as often as the son of mine exercising the same shl marry.
19. EVERY SON of mine to whom a life intt in the trust fund is hby given may, either bfe or after he shl become entitled to the receipt of the income throf in posson, but subjt & witht Power to
each son
to charge
portions.

prejudice to the trusts & powers precedg his life intt & to the trusts created in exercise of such powers, either bfe or after his marre by any deed or deeds revocable or irrevocable or by will or codl charge the trust fund or any pt throf with the paymt for the portion or portions of his younger child or chln by such marre, meang thereby any child or chln who being male attains or attain the age of twenty-one yrs or being female attains or attain that age or marries or marry other than his first or only son who attains the age of twenty-one yrs or the issue of any such younger child or chln such issue to take vested interests not later than twenty-one yrs from the death of the son of mine exercising this power, of a sum or sums not exceedg in the whole £——, such sums to be an intt vested, &c., *continue as at p. 673, f. 28, saying instead of "the husbd," "the son of mine exercisg this power."*

20. *Proviso as to annuities & portions taking effect, p. 675, f. 30, saying "annuity" for "rent-charge," & "become entitled in posson to the income of the trust fund."*

21. *Proviso limitg total amt chgeable for annuities & portions, p. 676, f. 31, mutatis mutandis, saying, "shl have preference & priority accordg to the order of priority of the trusts in favour of the sons of mine by whom the same resply shl be charged."*

22. *Investment clauses, pp. 829–830, including power to invest in land, p. 543, f. 9 (i), omitting subclause (ii) (b).*

[23. *Power to take purchased leasehds in name of beneficiary, p. 546, f. 13, mutatis mutandis.]*

Power of
manage-
ment &
leasing
of foreign
property.

24. MY TREES may exercise in respect of the real leasehd & immovable ppty abroad all the powers of managemt & leasg wch they are by law authorised to exercise in respect of similar ppty in England.

25. *Power to settle questions & apportion blended trust funds, p. 834, f. 9.*

26. *Declaration as to money received by trustees in colony, p. 853, f. 6.*

27. *Power to professional trustee to charge, p. 835, f. 10.*

28. *Power to appoint new trustees to "the pson or psons of full age if any for the time being entitled to the income of the trust fund," &c., p. 583, f. 1.*

(b) See S. L. Act, 1925, ss. 10 (1) and 77.

29. *Clause putting beneficiaries to election to confirm will*, p. 854, f. 9.
30. *Appointment of trustees under S. L. Act*, p. 852, f. 3.
- [31. *Nomination of trust corporation to receive notices*, p. 859, f. 18.]
- [32. *Marginal notes not to form part of will*, p. 859, f. 20.]
- Testimonium & attestation*, pp. 859-861.

XIX.

WILL of REALTY and PERSONALTY in ENGLAND and in a COLONY, appointing SEPARATE (a) TRUSTEES and EXECUTORS for the ENGLISH and the COLONIAL PROPERTY, and giving RESIDUE IN TRUST for WIFE during WIDOWHOOD, remainder as to a FIXED SUM for DAUGHTER, if LIVING, subject to her MARRYING with CONSENT of MOTHER, otherwise to her ISSUE. RESIDUE to a SON if LIVING. SUBSTITUTED gifts to the ISSUE of the SON and DAUGHTER, if dead at time of distribution. CROSS TRUSTS on FAILURE of the PRIMARY TRUSTS, and ULTIMATE TRUST for a BROTHER or his ISSUE. PROCEEDS of COLONIAL PROPERTY, after payment of expenses and debts there, to be REMITTED to ENGLAND. POWER to COLONIAL TRUSTEES on returning to ENGLAND to ACT as ENGLISH TRUSTEES.

Commencement, p. 718, f. 1.

1. *Specific legacies*, pp. 725 et seq.
2. *Immediate pecuniary legacy to wife*, p. 759, f. 8.
3. *Other general legacies*, pp. 757 et seq.
4. *General devise & bequest of residue* "except the real & personal estate in the colony of — herein devised & bequeathed to my colonial trees," to *English trees* ("herein called my

Residuary gift of English property.

(a) Where a testator appoints general executors and also special executors as to property in a colony, the real property in England vests in the general executors only: *Re Cohen & L. C. C.*, [1902] 1 Ch. 187.

general trees") *in trust for sale & conversion*, pp. 781, f. 1, & 785, f. 1.

Trusts of
English
property.

5. *Trust of proceeds of sale & conversion to pay debts, &c.*, "other than the debts owing by me in the sd colony the paymt whrof is hrinar provided for, but inclusive of such debts if & so far as such provon for the paymt throf shl be insufficient," p. 789, f. 3.

6. *Trust for investmt*, p. 791, f. 4.

7. *Trust of income for wife durg widowhood*, p. 791, f. 1.

Income
to wife
for
widow-
hood.

Trusts of
fixed sum.

For
daughter,
if living,
unless she
marries
without
consent.

8. AFTER THE death or re-marre of my sd wife (wehever shl first happen), my general trees shl raise out of the trust fund the sum of £—— & shl hold the same sum Upon the trusts & subjt to the powers & provons follg, that is to say:—

(i.) Upon trust to pay the same to my daur L. for her absolute benefit in case she shl be livg at the death or re-marre of my wife or at my death if my wife shl die bfe me (weh time is hrinar sometimes called the time of distribution) & shl be then unmarried, or shl have married durg my lifetime or after my death, with the prior consent or subsequent approval in the latter case of my wife signified at any time bfe the death or re-marre of my wife [or with the prior consent in writg of my trees (b)].

Substitu-
tion of
issue for
daughter,
if dead.

(ii.) If my sd daur shl have married durg my lifetime or after my death with such consent or approval as afsd & shl afterwards have died bfe the time of distribution, then my general trees shl hold the sd sum In trust for the child or chln of my sd daur who shl be livg at the time of distribution & shl being male attain the age of twenty-one yrs or being female attain that age or marry, if more than one in eql shares.

Gift over
on mar-
riage of
daughter
without
consent
to her
children.

(iii.) If my sd daur shl marry after my death & durg the widowhood of my sd wife witht such consent or approval as afsd, then my general trees shl hold the sd sum Upon trust, &c., *continue trust for children or remoter issue of daur as widow shl appt*, p. 797, f. 2, or p. 798, f. 3; And in default of & subjt to any such apptmt Upon trust whether my sd daur shl be livg or dead for the child or chln of my sd daur who shl be livg at the time of distribution or shl afterwards be born bfe the youngest of such chln for the time being in existence

(b) The words in brackets are intended to provide for the disability of the wife owing to illness.

attains a vested intt (c), & who being male attain the age of twenty-one yrs or being female attain that age or marry, if more than one in eql shares; but so that durg the life of my sd daur the income of the sd sum shl be pd to the psons who wd be entitled thereto or applied in the mner & for the pposes in & for wch the same would be applicable if she were dead.

(iv.) *Hotchpot clause*, p. 806, f. 24.

[(v.) *Provision as to distribution of sd sum when daughter attains a certain age*, p. 824, f. 12.]

Subject to trust aforesaid to sink into residue.

(vi.) If the sd sum shl not become absolutely vested under the trusts afsd, then the same & the income throf & all accumulons throf or so much throf as shl not become vested or be applied under the trusts & powers hrin declared & contained or the powers by law vested in my general trees shl, subjt & witht prejudice to the trusts & powers afsd, sink into the residue of the trust fund & be subjt to the trusts & provons hrinar declared & contained concerng the same.

9. THE RESIDUE of the trust fund after raisg the sd sum of £—— shl from & after the death or marre of my wife, or from & after my death shd she die bfe me, be held by my genl trees Upon the trusts & subjt to the powers & provons followg, that is to say:—

Trusts of residue.

(i.) In trust for my son —— if he shl then be livg for his absolute benefit.

For son, if living at time of distribution, if not, for his children.

(ii.) If my sd son shl then have died, then In trust for the child or chln (if any) of my sd son who shl be then livg & shl being male attain the age of twenty-one yrs or being female attain that age or marry, if more than one in eql shares.

(iii.) If my sd son shl have died witht leavg any such child or chln, then subjt to the trusts hrinbfe declared my general trees shl hold the sd residue Upon the like trusts & for the like pposes as are hrinbfe declared concerng the sd sum of £——.

10. If THE trust fund includg the sd sum of £—— or any pt or pts throf shl not become absolutely vested under the trusts hrinbfe declared, then the trust fund & all accumulons throf or such pt or pts throf as shl not have become vested or been applied under the trusts & powers hrin declared &

Ultimate trusts.

contained or the powers by law vested in my general trees, shl, subjt to the trust hrinbfe declared, be held by my general trees In trust for my brother — absolutely if he shl be livg at the time of the determinon or failure of the prior trusts hrinbfe declared, & if he shl then have died leavg a child or chln then livg, then In trust for such child or chln, if more than one in eql shares, & in default of any such child or chln, then In trust for my cousin — absolutely.

Power to
invest
fixed
sum.

11. MY GENERAL trees may at their discron invest the sd sum of £—— or any pt throf in or upon any of the investmts hby authorised, with power at the like discron to vary such investmts, & shl hold the investmts for the time representg the sd sum of £—— upon & for the like trusts & pposes as are hrinbfe declared concerng the sd sum of £——.

12. *Extension of statutory power of appropriation regarding* “the sd sum of £—— or any pt throf,” p. 833, f. 5.

13. *Maintenance & accumulation clause (d),* p. 826, f. 3.

14. *Investment clause,* p. 829, f. 1.

Devise
and be-
quest of
colonial
property.

15. I DEVISE & bequeath unto — & — (hrinar called my colonial trees) all my real & psonal este & effects situate & being at the time of my death in the Colony of — expressly includg all debts & other choses in action wch shl then be recoverable by action or other legal proceedings in such Colony (e) Upon the like trusts & subjt to the like powers & provons with respt to the sale conversion & gettg in of the same as are hrinbfe declared & contained with reference to my general este & effects hrinbfe devised & bequeathed to my general trees with full powers of managemt & leasg as if they were benefl owners of the ppty hrinbfe devised & bequeathed to them ; And I direct that my colonial trees shl stand possed of the net proceeds arisg from the sale conversion & gettg in of the sd real & psonal este & premes hrinbfe devised & bequeathed to them, & of the net rents profits & annual income throf until conversion, after paymt thereout of all outgoings & expses of managemt & realison or orwise incurred by my colonial trees (f) & any debts owing by me in the sd Colony of

Trusts.

(d) It appears safer to insert the maintenance clause, owing to the testator owning immovable property in the colonies.

(e) See *Re Clark*, [1904] 1 Ch. 294.

(f) See *ante*, p. 853, note (b).

— at my death, Upon trust from time to time to remit such net proceeds rents profits & income as & when the same sh^l be realised or reced by them to my general trees, to be resply held & applied by my general trees Upon the trusts & in the mner hrinbfe provd concerng the proceeds of the realison of my general este & the income throf resply, but not so as to increase or duplicate the sd sum of £——.

16. MY GENERAL trees except as to any ppty wch may for the time being be legally vested in my colonial trees, and my colonial trees as to such last mentd ppty, may, &c., *continue power to settle questions & apportion blended funds*, p. 834, f. 9, saying “acts or proceedings of my general trees or my colonial trees resply.”

17. I APPT my colonial trees special exs of this my will as to the ppty hrinbfe devised & bequeathed to them, and I APPT my general trees & my colonial trees if & when they sh^l return to England general exs of this my will as to the ppty hrinbfe devised & bequeathed to my general trees.

Appoint-
ment
of execu-
tors.

18. *Power to professional trustee to charge*, p. 835, f. 10.

19. IF THE sd —— & ——, *the colonial trees*, or either of them sh^l return to England whether in my lifetime or after my death, they or he may if willing assume the general treeship of this my will jointly with the other trees or tree for the time being if any, or alone if there sh^l be no other trees or tree, in wch case a deed (g) sh^l be executed for evidencing their or his acceptance of such treeship & for vestg the trust este in them or him either jointly or alone as afsd.

Power to
colonial
trustees
on re-
turning
to
England
to assume
general
trustee-
ship.

20. IF & so often as the trees hby constituted or any of them sh^l die in my lifetime, or if they or any of them or any tree or trees appted under this psnt power or by a Court of competent jurisdon sh^l die after my death or desire to be discharged or refuse or become unfit or incapable to act, or as to my general trees or any of them reside abroad for more than twelve calr months, or as to my colonial trees or any of them reside out of the sd Colony of —— for more than twelve calr months, my wife durg her life & afterwds the survivg or continuing trees or tree of the class in wch such vacancy or disqualificon sh^l occur (& for this ppose every refusg or retiring tree sh^l if willing to act in the execution of this power

Power to
appoint
new
trustees.

(g) A deed is desirable in such a case: see *Re Arabib*, [1891] 1 Ch. 601.

be considered a continuing tree), or the actg exs or exor or admors or admor of the last survivg or continuing tree of the same class, may appt a new tree or new trees in the place of the tree or trees so dying or desiring to be discharged or refusg or becoming unfit or incapable to act or residing out of the United Kingdom of Gt. Britain & N. Ireland or the sd Colony of — as the case may be as afsd, & upon every such apptmt the number of trees may be increased or reduced but not reduced to less than two in each class, & upon every such apptmt the trust ppty (if any) then vested in the trees or tree of the class in wch such vacancy or disqualificon shl occur or in the exs or ads of the last survivor of such trees shl, as soon as circes will admit, be vested in the trees for the time being of the same class, but every new tree may as well bfe as after the trust ppty shl have been so transferred execute all the trusts or powers in respt of wch he shl be so appted a tree as fully & effectually as a tree hby constituted.

Interpre-
tation of
“trus-
tees”
and devo-
lution of
powers.

21. IN THIS my will where the context so requires or admits the expression “my general trees” shl include the general trees or tree of this my will for the time being, & the expression “my colonial trees” shl include the colonial trees or tree of this my will for the time being, & all the trusts powers authorities & discretions hriabfe given to or vested in my general trees or my colonial trees respily shl devolve upon such psons or pson & be exercisable by them or him accordgly.

[22. *Nomination of trust corporation to receive notices*, p. 859, f. 18.]

[23. *Marginal notes not to form part of will*, p. 859, f. 20.]
Testimonium & attestation, pp. 859–861.

XX.

CONCURRENT WILL *disposing of REAL ESTATE in a FOREIGN COUNTRY* (a).

Commencemt, p. 719, f. 2: I HBY DEVISE all my real & im-
movable ppty (includg leasehds) situate in the Kingdom
[Republic] of — to K. of —, & L. of — for all my este

Wills of
property

(a) Where the testator is possessed of land situate in a colony or foreign country, or in Scotland, it may be necessary or more convenient to make a separate will as to such property. Provided the two wills are independent

one dealing with property within the jurisdiction of the English Court and the other with property outside it, there is no obligation on the party propounding the English will to prove the other: *In the Estate of White Todd*, [1926] P. 173. As to wills of Scottish property, see The Titles to Land Consolidation (Scotland) Act, 1868, ss. 19, 20, 21, and The Conveyancing (Scotland) Act, 1874, ss. 38, 39, 40, 46, 51; Bell's Commentaries on the Law of Scotland, Vol. I., p. 324. As to wills of persons domiciled in Scotland, see *Re Craignish*, [1892] 3 Ch. 180; and see generally as to wills of property in Scotland or the colonies or foreign countries, the valuable Appendix to Jarman, 5th ed., 1668.

Occasionally there may be doubts whether a testator is domiciled in England or in Scotland or abroad; and as the material validity of a will of *personalty* and the rights of persons claiming under it are regulated by the law of the testator's domicile (though as far as regards construction it seems that this rule may give way to a distinct expression or indication of a contrary intention, see *Bradford v. Young*, 26 Ch. D. 656; 29 Ch. D. 617; *Re Price*, [1900] 1 Ch. 442; *Re Cunningham*, [1924] 1 Ch. 68), it will be proper in this case to have the will settled both by an English and a Scottish or foreign lawyer, so that it may take effect whatever his domicile may be, see *ante*, p. 720, note (g). As to the form of the execution of a will of *personalty* by a British subject wherever domiciled, see the Wills Act, 1861, which, however, it should be borne in mind, does not affect the formalities required by the Wills Act, 1837, ss. 9 and 10, as to a will made in exercise of a power over *personalty*; see *ante*, p. 585, note (a). Leaseholds are "personal estate" within the meaning of s. 1 of the former Act. A will, therefore, which is made by a British subject according to the form required by the law of the place where it is made, is effectual to pass English leaseholds: *Re Grassi*, [1905] 1 Ch. 584, and real estate held on trust for sale: *Re Lyne's Settlement Trusts*, [1919] 1 Ch. 80.

The construction of a will disposing of *land* and of chattels real is regulated by the *lex loci situs*, and therefore such a will should be settled by a lawyer conversant with the law of the place where the land is situate. In case, however, the testator is *in extremis*, so that there is no time to procure the assistance of a foreign lawyer, the better course appears to be to make a short concurrent will disposing only of the foreign land, and in the principal will to put all persons to their election to confirm it; see *Douglas-Menzies v. Umphelby*, [1908] A. C. 224, and *ante*, p. 854, f. 9.

Unsold realty held upon trust for sale is immovable property and the succession thereto is governed by the *lex loci situs*: *Re Berchhold*, [1923] 1 Ch. 192.

The question whether the formalities necessary for the validity of a will disposing of land are those of the *lex loci actus* or the *lex loci situs*, is answered differently by the laws of different countries, but according to the better opinion this also should be governed by the *lex loci situs*: see Story, Conflict of Laws, ss. 474 *et seq.*; *Pepin v. Bruyère*, [1902] 1 Ch. 24. As to the rule in France, see 29 L. Q. R. 42. The safer course in the absence of special information is to execute the will so that it will be valid in either case. It is apprehended that a holograph will, dated and signed by the testator (which is valid in most countries where the law is founded on the Civil Law) and executed in the presence of three witnesses, all signing at the same time in the presence of the testator and each other, so as to have been valid under the Statute of Frauds, would be valid in most countries; it

& intt thrin [& I hby institute them my hrs in respt throf],
 UPON TRUST to sell the same & to let & manage the same in
 the meantime with the same discretionary powers as to the
 time & mode of sale & orwise in relation thereto & as to the
 lettg & managemt of the ppty as if they were absolute owners
 throf & to give effectual receipts for the pchase-moy & rents
 throf AND UPON TRUST to pay & remit the net proceeds of such
 sale & the net rents & profits in the meantime (after paymt of
 all expses & outgoings) to M. of —, & N. of — or other
 my acting exs or exor for the time being in England to be
 held by them or him Upon the trusts & for the pposes declared
 concerng the same by my will bearg even date herewith, whose
 receipt shl be an effectual discharge for the same & exonerate
 the psons or pson payg the same from all further responsibility
 in relation thereto.

Testimonium & attestation, pp. 859-861.

would appear, however, that witnesses are not necessary according to French law: *Re Kirwan*, 25 Ch. D. 373; *Re Price*, [1900] 1 Ch. 442; *Barretto v. Young*, [1900] 2 Ch. 339. In some cases it may be proper to execute it as a mystic testament: see Code Napoleon, clause 976.

The intention of a testator, expressed in a will of foreign property, must be gathered by reference to the system of law with reference to which the will is framed: *Studd v. Cook*, 8 App. Cas. 577; but cf. *Re Miller*, [1914] 1 Ch. 511.

See further on this subject and generally on the question by what local law wills are governed, Jarman, 6th ed., pp. 1 *et seq.* As to the wills of aliens, see *Bloxam v. Favre*, 9 P. D. 130; *In b. Groos*, [1904] P. 269. As to the effect upon the construction of a will of personalty of the subsequent acquisition by the testator of an English domicile, see *Re Groos*, [1915] 1 Ch. 572.

A married woman is incapable of acquiring a separate domicile from her husband where there has not been a decree of judicial separation or a divorce *a mensa et thoro*: *Re Mackenzie*, [1911] 1 Ch. 578; *Lord Advocate v. Jaffrey*, [1921] 1 A. C. 146; *A.-G. for Alberta v. Cook*, [1926] A. C. 444.

With regard to the above Precedent it should be borne in mind that in some countries, such as France and elsewhere, where the Code Civil prevails (see also the New Zealand Family Protection Act, Part II. (No. 60 of 1908), s. 33 (1)), the power of testamentary disposition is restricted (though possibly such restrictions as those contained in that code may not apply to a British subject, see Jarman, 5th ed., 1669 note); and also that the machinery of trusts is in some countries unknown: e.g. in Jersey; *Re Pearse*, [1909] 1 Ch. 304.

WILLS EXERCISING POWERS OF APPOINTMENT.

XXI.

WILL of a WIDOW in favour of her CHILDREN or ISSUE
UNDER a SPECIAL POWER of APPOINTMENT contained
in her HUSBAND'S WILL, and declaring TRUSTS of her
OWN PROPERTY by REFERENCE (a).

Commencemt, p. 718, f. 1.

1. *Appointmt of exs & trees*, p. 721, f. 2.

2. *Appointmt of guardians*, p. 724, f. 11.

3. WHAS MY late husbd K. by his will dated, &c., & proved [with a codl] on, &c., directed that the trees throf shd stand possessed of the investmts thereby directed to be made of the proceeds of the sale callg in & conversion thereby directed to be made of his real & residuary psonal este & of the other moy formg pt of his este & of the income of such investmts & of the rents profits & annual produce of such real & psonal este until the conversion throf, upon trust after my death for such one or more, &c., *continue recital of power of apptmt among chln or remoter issue*; NOW IN EXERCISE of the sd recited power & of every or any other power in this behalf me enablg, I APPT & DECLARE that the trees or tree for the time being of the sd will of my sd husbd shl from & after my death stand possessed of the trust funds & ppty representg or constitutg at the time of my death (b) the residuary real & psonal este of my sd husbd or the proceeds of the sale callg in & conversion throf & of the income & annual produce throf Upon the trusts & subjt to the powers & provons hrinar declared & contained concerng the same that is to say *continue trusts for children & their issue, see Prec. IX.*, p. 871 (c).

Recital of husband's will.

Appointment.

4. *Specific legacies*, pp. 725 *et seq.*

(a) As to the danger of making bequests by reference to the trusts of some other bequest, see *Hindle v. Taylor*, 5 D. M. & G. 577; *Cooper v. Macdonald*, L. R. 16 Eq. 258; *Re Arnell*, [1924] 1 Ch. 473.

(b) As to the importance of these words, see *Re Dowsett*, [1901] 1 Ch. 398; *Beddington v. Baumann*, [1903] A. C. 13.

(c) In wills exercising special powers of appointment the points mentioned in the note, Vol. I., pp. 84-87, require attention. If it is desired to provide for the event of a child dying in the lifetime of the testator, this cannot be done by an appointment to the deceased child or its representatives (s. 33

Points to be attended to in wills

5. *General legacies*, pp. 757 *et seq.*

6. *General devise & bequest of testatrix's own residue to trees of will in trust for sale & conversion*, p. 781, f. 1, & p. 785, f. 1.

7. *Trust of proceeds of sale & conversion*, p. 789, f. 3.

8. *Trust for investmt*, p. 791, f. 4.

Trusts of
residue
by refer-
ence.

9. MY TREES sh^l stand possed of the residue of the sd moneys (which moneys and the ppty for the time being representg the same are hrinar called the trust fund) & the income throf Upon the like trusts & with & subj^t to the like powers & provons as are hrinbfe declared & contained concerng the sd trust funds & ppty representg or constitutg the residuary este of my sd late husbd, with the substitution of my trees for the trees of his will.

10. *Ultimate trusts*, p. 819.

11, &c. *Add such of clauses 23-31 of Prec. IX.*, pp. 872 *as may be required.*

Testimonium & attestation, pp. 859-861.

exercising
powers of
appoint-
ment
among
children
or issue.

of the Wills Act, 1837, not applying to appointments under special powers: *Holyland v. Lewin*, 26 Ch. D. 266; though it does apply to appointments under general powers: *Eccles v. Cheyne*, 2 K. & J. 676), and the only course in such a case will be to appoint a share to the issue of the deceased child (if they are objects of the power) by substitution, or to leave the share unappointed so as (if the case admits of it) to devolve on the representatives of the deceased child under the trust in default of appointment with the aid of the hotchpot clause. Sometimes, however, an appointment in excess of the power may be made effectual by giving benefits to the persons entitled in default of appointment and putting them to their election to confirm it. A testamentary appointment may be a fraud upon a power: see *Re Kirwan*, 25 Ch. D. 373; *Re Perkins*, [1893] 1 Ch. 283; *Re Cohen*, [1911] 1 Ch. 37.

An appointment under a special power made upon the trusts, &c., of an existing settlement, "or such of them as are capable of taking effect" may be construed as meaning what the law allows to take effect: *Re Finch & Chew*, [1903] 2 Ch. 486.

Prame of
Prece-
dent.

As the power of appointment in the above Precedent is derived under the will of the husband of the testatrix and not under their marriage settlement, so that the children were *in esse* at the time of the creation of the power, the usual trusts settling the shares appointed to the children on them for life with remainder to their children (who are objects of the power) at 21, &c., may be inserted; but not a power of appointment among the issue, or a trust creating a protected life interest.

A will exercising a power must be executed in the usual manner, although special formalities may be required by the power; see Wills Act, 1837, s. 10.

The rule against double portions may apply to a subsequent appointment to a child by deed under the power: *Montague v. Montague*, 15 Beav. 565; *Re Ashton*, [1897] 2 Ch. 574 (on appeal, [1898] 1 Ch. 142); *Re Peel*, [1911] 2 Ch. 165.

XXII.

WILL under SPECIAL POWERS of APPOINTMENT in a SETTLEMENT and prior WILL appointing a LEGACY to a DAUGHTER, and subject thereto ONE MOIETY of the FUNDS to a SON for LIFE DETERMINABLE on BANKRUPTCY, &c., with remainder to his CHILDREN, and the OTHER MOIETY to a DAUGHTER for LIFE, with remainder to her CHILDREN, and disposing of the TESTATOR'S OWN PROPERTY in like manner. HOTCHPOT CLAUSE (a).

Commencement, p. 718, f. 1.

1. *Appointment of executors & trustees*, p. 721, f. 2.

[2. *Appointment of guardians*, p. 724, f. 11.]

3. WHAS UNDER or by virtue of the settlemt made on my marre with my late wife dated, &c., & the will dated, &c., [& a codl thereto dated, &c.] of my late father wch was [were resply] proved, &c., divers trust funds & ppty are settled in trust (but as to the trust premes settled by the sd will [& codl] of my sd father subj to the life intt of my mother thrin) for myself durg my life, & after my death upon trusts for my issue under wch I have a testy power of apptmt over such respective trust funds & ppty in favour of all or any exclusively of the others or other of my chln or remoter issue in such shares & mner as I may think fit ; Now IN EXERCISE of the respective powers for this ppose given to me by the sd settlemt & will [& codl] resply, & of all other powers (if any) enablg me in this behalf, I hby direct & appt that the trees or tree for the time being of my sd marre settlemt shl as soon as may be after my death, by or out of the trust funds & premes held upon the trusts of the sd settlemt, raise or set apart & appropriate the sum of £—— or trust funds or investmts wch such trees or tree shl

Recital of powers.

Appointment of sum of money.

(a) See the notes, Vol. I., pp. 84-87, and *ante*, p. 899, especially as to the determinable life interest of the son, and as to the form of the trust for the issue of the son and daughter. The object of the hotchpot clause on p. 904 is to redress any inequality caused by the possible exclusion of some of the children from sharing in the appointed funds. The validity of such a clause in a will made in exercise of a special power of appointment (where the instrument creating the power contained no hotchpot clause) is free from doubt : see *Re Buckley*, [1893] W. N. 95.



deem to be of equivalent value, & shl stand possessed of the same or of the trust funds & premes from time to time representg the same (& so that such appropriation shl not affect the power of transposg investmts in my sd marre settlemnt contained) UPON THE LIKE TRUSTS & subjt to the like powers & provons for the benefit of my daur L. & her issue, & with the like ulterior trusts for the benefit of my son M. & his issue in the event of the default or failure of the issue of my sd daur, as are hrinar declared & contained concerng the moiety of the residue of the sd trust premes in favour of my sd daur & her issue & orwise as hrinar mentd AND I FURTHER appt & direct that all the residue of the sd trust funds & ppty held upon the trusts of my sd marre settlemnt, & also all & singr the trust funds & ppty held upon the trusts of the sd will [& codl] of my sd father as afsd, & the trust premes from time to time representg the same resply, shl from & after my death remain & be, & that the trees or tree for the time being of the sd settlemnt & will [& codl] resply shl stand possessed throf resply (but subjt as to the trust premes held under the sd will [& codl] to the life intt of my mother thrin) UPON THE TRUSTS hrinar declared concerng the same, that is to say As to one moiety of the sd respective trust premes UPON TRUST that the sd respective trees or tree shl pay the income of the sd moiety to my son durg his life unless some act or event shl have been done or happened durg my life whereby if the same income belonged absolutely to him it would at my death become vested in or charged in favour of some pson (c) or until some act or event shl be done or happen within twenty-one yrs after my death whereby if the same income belonged absolutely to him it wd have become so vested or charged. AND after, &c., *continue trust of income after forfeiture for the psons who would be entitled if the son were dead*, p. 794, f. 5. AND FROM & after the death of my sd son the sd respective trees or tree shl stand possessed of the capital & income of the sd moiety of the sd respective trust premes IN TRUST for the chln or child of my sd son who shl be born in my lifetime & shl attain the age of twenty-one yrs or in the case of daurs marry under that age, & the chln or child

Upon trusts for daughter and son.

Appointment of residue.

Upon trusts.

As to one moiety for son till bankruptcy, &c. (b).

After death of son for his children.

(b) This form of trust is safer than relying upon the protective trusts under s. 33 of the T. Act, 1925, see *ante*, p. 792, note (h).

(c) Person includes a corporation and the singular includes the plural: L. P. Act, 1925, s. 61.

of my sd son who shl be born after my death & shl be livg at the expiron of twenty-one yrs from my death (d) or in the case of daurs shl previously have married, & if more than one in eql shares ; AND I FURTHER appt & declare that the sd respective trees or tree of the sd settlemt & will [& codl] resply shl from & after my death stand possed of the other moiety of the sd respective trust funds & ppty held upon the trusts of the sd settlemt & will [& codl] resply (subjt as afsd) & the trust premes representg the same resply & the income throf resply

Appoint-
ment of
other
moiety.

(d) This extension of the appointment to issue born after the testator's death, though not too remote, as the shares are made to vest within 21 years from his death, would go beyond the power if that were restricted to issue born in the appointor's lifetime.

The following is a form, where the power arose under the testator's marriage settlement, by which the grandchildren take vested interests subject to be divested on death under 21, &c., framed so as not to be too remote :—

“PROVD ALWAYS & I direct & appt that the trees or tree for the time being of the sd settlemt shl stand possed of the share hrinbfe appted to my daur X. & the investmts throf Upon trust to pay the income of such share to the sd X. durg her life witht power to anticipate the same durg twenty-one yrs from my death & from & after her death shl stand possed of the sd share & the investmts & annual income throf In trust for such of the chln of the sd X. as shl be born within twenty-one yrs after my death & if more than one in eql shares, Provd always & I direct that the share of any son of the sd X. who shl be born & die a minor bfe the expiron of twenty-one yrs after my death & the share of any daur of the sd X. who shl be born & die a minor & unmarried bfe the expiron of twenty-one yrs after my death togr with any share wch may have accrued to such son or daur under this psnt clause shl upon the death of such son or daur so dying as afsd go to augmt the share or shares of the other child or chln of the sd X. born within the period afsd & if more than one in eql portions And if there shl be no child of my sd daur X. born within the period afsd or if there shl be any such child or chln but all such of them as are sons shl die minors within the period afsd & all such of them as are daurs shl die minors & unmarried within the same period then the trees or tree for the time being of the sd settlemt shl stand possed of the sd share & the investmts & income throf IN TRUST,” &c.

Settle-
ment of
daugh-
ter's
share
within
limits as
to per-
petuity.

Upon
trust for
daughter
for life
and for
her chil-
dren.

Per-
petuity.

Gift in
case son
or daugh-
ter dies
without
issue.

UPON TRUST to pay such income to my sd daur L. durg her life witht power to anticipate the same durg twenty-one yrs from my death (e), AND FROM & after her death as to as well the captl of the same moiety as the income throf Upon the like trusts & subjt to the like powers & provons for the benefit of the chln or child of my sd daur born in my lifetime or after my death as are hrinbfe declared & contained concerng the first-mentd moiety of the sd trust premes for the benefit of the chln or child of my sd son born in my lifetime or after my death ; PROVD ALWAYS & I declare that, subjt & witht prejudice to the trusts hrinbfe declared concerng either moiety, such moiety & the income throf or so much throf as shl not have been applied or disposed of under the trusts or powers vested in the sd respective trees or tree shl be held Upon the like trusts & subjt to the like powers & provons as are hrinbfe declared & contained concerng the other moiety,

4. *Specific legacies*, pp. 725 *et seq.*

5. *General legacies*, pp. 757 *et seq.*

6. *General devise & bequest of testor's own real & personal estate to trustees in trust for sale & conversion*, p. 781, f. 1, & p. 785, f. 1.

7. *Trust of proceeds of sale & conversion for payment of debts, &c.*, p. 789, f. 3.

8. *Trusts for investment*, p. 791, f. 4.

9. *Life interest in "a moiety of the trust fund" to the son*, p. 791, f. 1.

10. *Trust of moiety for children of son as he shall appoint*, p. 797, f. 2, & *trust in default*, p. 798, f. 4.

11. MY TREES shl stand possed of the other moiety of the trust fund Upon the like trusts, &c., *continue trusts of other moiety for daughter & her chln by reference to trusts of son's moiety*, p. 814, f. 13, *mutatis mutandis*.

Hotchpot
clause.

12. No CHILD of my sd son or daur as the case may be shl be entitled to any share of the moiety of the trust fund or the ppty for the time being representg the same the trusts whrof are hrinbfe declared in favour of the chln of my son or daur resp'y, witht bringing the share of capital (if any) to wch he

(e) The restriction in the text to 21 years appears to be necessary as to the fund derived under the marriage settlement, and possibly also as to the other fund : see *ante*, p. 903, note.

or she may become entitled of the trust premes hrinbfe appted under the respective powers contained in my sd marre settlemt & in the sd will [& codl] of my sd father into hotchpot & accountg for the same accordgly.

13, &c. *Add such of clauses 21-31 of Prec. IX., ante, p. 872, as may be required.*

Testimonium & attestation, pp. 859-861.

XXIII.

WILL of a MARRIED WOMAN under a GENERAL POWER in her MARRIAGE SETTLEMENT in favour of her HUSBAND (a).

THIS IS THE LAST WILL of me, A., the wife of B., of, &c.; *Appointmt of exs*, p. 720, f. 1; IN EXERCISE of a power contained in a settlemt dated, &c., being the settlemt executed on my marre with my sd husbd & of every other power hrunto me enablg, I appt & direct that if there shl be no child of my sd marre who being a son shl attain the age of twenty-one yrs or being a daur shl attain that age or marry, then the trees or tree for the time being of the sd settlemt shl from & after my death or such default or failure of our issue, wch shl last happen, & subjt to the trusts & powers by the sd settlemt or by law vested in such trees or tree & to every exercise of such powers, stand possed of the ppty representg the sum of £—, or, “the trust funds & premes” thereby settled [& all ppty becomg subjt to the trusts of the sd settlemt by virtue of the provon thrin contained for the settlemt of my other & after-acquired ppty] IN TRUST for my sd husbd absolutely; AND I DEVISE bequeath & appt all other ppty whether real or psonal belongg to me includg any ppty in wch I shl have an entailed intt at my death or over wch I shl at the time of my death have any absolute power of apptmt or disposition by will, subjt to my debts & engagemts in the nature of debts, Unto my sd husbd absolutely (b). *Testimonium & attestation, pp. 859-861.*

(a) The husband's right to the wife's undisposed of separate personal estate is not affected by the M. W. P. Act, 1882, see *ante*, p. 533, note.

(b) If the gift of the wife's own property is made to a stranger, it ought to be made contingent on her leaving no issue, unless she is past child-bearing.

XXIV.

TESTAMENTARY APPOINTMENT *by a MARRIED WOMAN*
under a POWER to APPOINT to her ISSUE, of the whole
INCOME during her HUSBAND'S LIFE to her INFANT
SONS and UNMARRIED DAUGHTERS, there being no
POWER to APPOINT to HUSBAND (c).

Appoint-
ment.

THIS IS THE LAST WILL of me, A., the wife of B., of, &c., *Appointmt of exors*, p. 720, f. 1. IN EXERCISE of the power for this ppose given to me by the will of X., of, &c., deced, dated, &c., & proved, &c., & of every, &c., I hby appt that from & after my death the trees or tree for the time being of the sd will shl durg the life of my husbd A. (shd he survive me) stand possed of all the annual income of the share of the residuary este of the sd testor by the sd will settled in trust for me for my life & after my death in trust for my issue & the investmts representg the same IN TRUST for such of my sons as shl for the time being be under the age of twenty-one yrs & such of my daurs as shl for the time being be spinsters (whether infants or adults) if more than one in eql shares & shl pay & apply such pt as the sd trees or tree shl in their uncontrolled discron think fit of the share of such income belongg to any such son or daur who shl for the time being be an infant for or towards his or her maintee educon or benefit either directly or by payg the same for that ppose to my sd husbd witht being liable or concerned to see to the applicon throf & witht regard to the ability of my sd husbd to maintain his infant chln or to the existence of any other fund applicable for that ppose [& shl, &c., *continue trust for accumulon*, p. 528, f. 20, *mutatis mutandis (d)*] & subjt as afsd shl from & after my death hold the sd share of the sd residuary este & premes IN TRUST, &c., *for all children at 21, &c.*

Mainten-
ance
clause.

Testimonium & attestation, pp. 859-861.

(c) This appointment, although having for its object indirectly to secure the income to the husband as far as possible, seems legitimate, and not open to objection under the doctrine as to frauds on powers.

(d) As to the trust for accumulation, see *ante*, p. 661, note.

XXV.

WILL of a MARRIED WOMAN under a GENERAL POWER in her MARRIAGE SETTLEMENT, and also disposing of all her SEPARATE ESTATE and PROPERTY, so as to OPERATE whether she SURVIVES or PREDECEASES her HUSBAND (a). BEQUEST of LEGACIES and ANNUITY. SPECIAL GIFT of ANNUITY FUND after DEATH of ANNUITANT. GIFT of LEGACIES in trust for SISTERS and their ISSUE. LEGACY in trust for CHILDREN of another SISTER who does not take a life interest. DIRECTION to pay INCOME of MINORS to their MOTHER for their MAINTENANCE. GIFT of RESIDUE to BROTHERS.

Commencement, p. 718, f. 1; *Appointment of exs & trustees*, p. 721, f. 2; IN EXERCISE of every power given to me by a settlement made on my marriage with my said husband, dated, &c., & made between myself by my then name of — of the first part my said husband of the second part & C. & D. of the third part, or otherwise & to the intent that this my will shall take effect

Appointment.

(a) The will in this precedent is made under the old form of ultimate trust in a marriage settlement of the wife's property in default of issue of the marriage, which was, if she predeceased the husband, as she should by will or codicil appoint, but if she survived him, for her absolutely. Before the M. W. P. Act, 1893, a will made during coverture in such a case could only operate to exercise her power of appointment, and not to dispose of her absolute interest if she survived her husband, as to which she had during coverture no testamentary capacity, and to dispose of which, therefore, in the event of her surviving, she had to make a new will or re-execute her will. But the M. W. P. Act, 1893, s. 3, provides that s. 24 of the Wills Act, 1837 (by virtue of which a will, with reference to the real and personal estate comprised in it, speaks from the death of the testator, unless a contrary intention appears), is to apply to the will of a married woman (dying after the 4th December, 1893: *Re Wylie*, [1895] 2 Ch. 116), whether or not she has any separate property at the time of making it, and the will therefore does not need re-execution or re-publication after the husband's death: see *Re James*, [1910] 1 Ch. 157. A will made during coverture, exercising a power of appointment during coverture, operates as a valid exercise of the power, notwithstanding that the testatrix dies discoverd: *Re Illingworth*, [1909] 2 Ch. 297; *Re Safford's Settlement*, [1915] 2 Ch. 211.

M. W. P. Act, 1893.

Where the power of appointment by will is made exercisable by the wife whether covert or discoverd, as in f. 26, *ante*, p. 531, its operation is of course unaffected by the husband's death.

Upon
trust to
pay debts
(c)

and
legacies,
and an
annuity.
Sum to
be set
apart to
answer
annuity.
Bequest
after
death of
annui-
tant.

whether I survive or predecease my sd husbd, I hby appt that in case of such default or failure of issue of my marre as in the sd settlemt is mentd, all the ppty wch now is or may hrafter become subjt to the trusts of the sd settlemt [or of any instrumt referrg thereto] or so much throf as shl not have become vested or been applied under the trusts or powers by the sd settlemt [or other instrumt] or by law vested in the trees or tree throf, shl on the death of the survor of myself & my sd husbd, or such default or failure of issue as afsd, wchever shl last happen, be transferred by the trees or tree for the time being of the sd settlemt [or other instrumt] to my trees (b) whose receipt shl be an effectual discharge for the same AND shl be held by my trees upon the trusts followg, that is to say, UPON TRUST to pay thereout my funeral & testy expses and debts & engagemts in the nature of debts (unless the same shl be orwise pd as hrinar provided & as the secondary fund for the paymt throf), & in the next place to pay or provide for thereout the followg legacies & annuities free of duty, namely, *general legacies*, pp. 757 *et seq.*, & *an annuity to begin from the death of the survivor of the testatrix & her husband*, p. 773; AND I DIRECT my trees to set apart & invest in any investmts hby authorised a sufficient capl sum to answer by the annual income throf the sd annuity hrinbfe given & upon the death of the sd annuitant I GIVE the fund so set apart to such of my brothers & sisters (other than my sister C.) as shl be livg at the death of the survor of myself & my husbd & the sd annuitant, or shall be then dead leavg issue then livg, if more than one in eql shares, to the intent that the shares so given to such of my brothers as shl be dead leavg issue shl vest in their respective psonal repves as pt of their psonal este (d), & that the shares so given to my sd respective sisters whether

(b) The trusts of the will in this case, as the power is general, may be directed to be executed by trustees appointed by the testatrix; though in the case of a special power the appointor cannot substitute other trustees for those appointed by the creator of the power contrary to his intention: *Re Tyssen*, [1894] 1 Ch. 56.

(c) The appointed fund would be assets for payment of debts without any express provision: see *M. W. P. Act*, 1882, s. 4; *Re Fieldwick*, [1909] 1 Ch. 1. As to the rights of the husband to retain the funeral expenses of his wife as against creditors in the absence of a charge of debts, see *Re McMyn*, 33 Ch. D. 575.

(d) See *ante*, p. 802, note (a).

surviving me or not shall be retained by my trustees & held Upon the trusts herein declared concerning the legacies of £—— each next herein bequeathed in trust for them respectively; I DIRECT that my trustees shall set apart the sum of £—— or investments which they shall consider of equivalent value for each of my said sisters other than my sister C. to be held upon the following trusts, that is to say, UPON TRUST to vary the investments thereof at any time in any manner herein authorised at discretion, & to pay the income of each of such sums & the investments thereof to the sister of mine for whom the same shall be intended during her life & so that during coverture the same shall be with power of anticipation, & after her death shall hold the capital & future income thereof IN TRUST, &c., *for issue of sister, as she may appoint*, p. 797, f. 2, & *in default for her children at 21*, &c., p. 798, f. 4; *Hotchpot clause*, p. 806, f. 24; AND IF any of my said sisters shall have no child who shall attain a vested interest under the trusts hereinbefore continued, then subject to the trusts aforesaid the legacy hereinbefore bequeathed in trust for her & the trust funds representing the same shall sink into the residue of the said trust premises; AND I DIRECT that my trustees shall set apart the sum of £—— or investments which they shall consider of equivalent value, with power to transpose the investments thereof in manner aforesaid, & shall hold the same IN TRUST for the child or child of my said sister C. who shall, &c., p. 799, f. 8; AND I DIRECT that the income of the expectant shares of such respective child shall during their respective minorities in the case of sons & minority & spinsterhood in the case of daughters, be paid to their mother the said C., if living, for their maintenance & education, but without any liability to account for the application thereof, & in case of her death the same income or any part thereof shall be applied at the discretion of my trustees for that purpose, either directly or by payment thereof to the guardian or guardians of such respective child without liability to see to the application thereof, & any surplus income shall be invested in manner aforesaid & accumulated as an addition to the capital of the fund from which the same shall have proceeded; AND IF there shall be no child of my sister C. who shall attain a vested interest under the trusts aforesaid, the said last-mentioned legacy & the trust premises representing the same, or so much thereof as shall not have been applied or disposed of under the trusts aforesaid, shall sink into the residue of the said trust premises; AND I APPOINT, devise & bequeath all the residue of the said trust premises com-

Legacies for benefit of sisters.

Trusts of legacies.

Sister for life,

and for her issue.

Gift over on death of sister without issue.

Gift of another legacy to the children of another living sister.

Direction to pay income of shares of minors to mother for maintenance.

Gift over in case no child shall attain a vested interest.

Residuary appointment.

ment, devise, and bequest.

Equally to brothers.

prised in or subjt to the trusts of my sd marre settlemt (includg in such residue any of the legacies hrinbfe bequeathed wch may wholly or partially fail by lapse or orwise) (a) & all & singr other the este & effects both real & psonal of or to wch I shl at my death be seised possed or entled as my separate este includg entailed intts in posson or wch I may have power to dispose of by will (whether I survive my sd husbd or not), subjt to & as the primary fund for the paymt of my debts & engagements in the nature of debts, Unto & equally betn such of my brothers as shl be livg at my death or shl have previously died leavg issue then livg if more than one in eql shares, & so that the shares so expressed to be given to any such deced brother shl vest in his exs or ads as pt of his real or psonal este as the case may be, *Investmt clause*, pp. 829-830; *Extension of statutory power of appropriation*, p. 833, f. 5; *Power to settle questions & apportion blended funds*, p. 834, f. 9; *Power to professional trustee to charge*, p. 835, f. 10; *Testimonium & attestation*, pp. 859-861.

WILLS GIVING PROPERTY IN STRICT SETTLEMENT.

XXVI.

WILL devising FREEHOLD and LEASEHOLD PROPERTY to the TESTATOR'S ISSUE in STRICT SETTLEMENT, and bequeathing HEIRLOOMS and the RESIDUARY PERSONALTY on corresponding trusts.

Commencement, p. 718, f. 1.

1. *Appointment of executors & trustees*, p. 721, f. 2.

[2. *Appointment of guardians*, p. 724, f. 11.]

3. *Specific devises*, pp. 736 et seq.

4. *Direction that specific devises shall be free of duty*, p. 744, f. 25.

5. *General devise & bequest of freehold & leasehold property in strict settlemt*, p. 837, f. 2.

(a) See *Re Jarrett*, [1919] 1 Ch. 367, where it was held that the revocation by codicil of an appointment contained in the will, did not prevent the appointed property from passing by a residuary bequest under s. 27 of the Wills Act.

- (i.) *Limitation of rent-charge to wife*, p. 839, f. **12**.
- (ii.) *Charge of portions for testator's younger children*, p. 838, f. **6**.
- (iii.) *Limitations in strict settlement to testator's sons & their issue male*, p. 840, f. **20**.
- [(iv.) *Limitations to testator's daughters & their issue male*, p. 841, f. **21**.]
- (v.) *Limitations in remainder to the issue general of testator's sons*, p. 841, f. **22**.
- (vi.) *Limitations in remainder to testator's daughters & their issue, &c. (b)*, p. 843, f. **23**.
- (vii.) *Ultior limitations (if any)*, see pp. 837 et seq.
- (viii.) *Ultimate limitation*, p. 846, f. **29**.
- 6.** *Proviso cutting down interests in tail by purchase of persons born in testator's lifetime*, p. 839, f. **14**.
- [**7.** *Name & arms clause (c)*, p. 664, f. **21**.]
- 8.** *Trusts for giving effect to charge of portions for testator's younger children (d)*, p. 846, f. **31**.
- 9.** *Power to males to jointure*, p. 847, f. **32**.
- 10.** *Power to females to limit rent-charges to husbands*, p. 847, f. **33**.
- 11.** *Power to charge portions*, p. 847, f. **34**.
- 12.** *Provision that charge of rent-charge or portions shall not take effect unless person charging or his or her issue entitled in possession*, p. 675, f. **30**.
- 13.** *Provision limiting total amount chargeable for rent-charges & portions*, p. 676, f. **31**, *mutatis mutandis*.
- [**14.** *Shifting clause carrying over the estate on succession to another estate*, p. 666, f. **22**, *mutatis mutandis*.]
- 15.** *Clause extending power of management during minority*, p. 847, f. **35**.
- 16.** *Clause introductory to clauses extending powers of S. L. Act*, p. 848, f. **36**, & *such of the extended powers on pp. 677 et seq. as may be desired*.

(b) If the limitations to the testator's daughters and their issue male (p. 841, f. 21) is inserted, f. 24 should be substituted for f. 23.

(c) If the name and arms clause is inserted, the variations given in the notes to the forms for that case must also be inserted.

(d) For variations for name and arms or other shifting clause, see *ante*, p. 654, note (a).

17. *Restriction of powers in relation to mansion house*, p. 848, f. 39.

[18. *Clause as to residence*, p. 848, f. 38.]

19. *Additional modes of investment & application of capital money*, pp. 684 et seq.

20. *Power to trustees to apply capital money towards expenses of improvements without requiring repayment by instalments*, p. 689, f. 6.

21. *Power to lend capital money to tenant for life for stocking farms, &c.*, p. 688, f. 4.

22. *Power to trustees to apply capital money in recouping to tenant for life costs incurred in protection of property*, p. 689, f. 5.

23. *Application of insurance money*, p. 689, f. 7.

24. *Provision as to notices under S. L. Act*, p. 858, f. 15.

25. *Appointment of trustees for the purposes of the S. L. Act*, 1925, p. 852, f. 3.

26. *Provision as to references to S. L. Act*, 1925, p. 858, f. 16.

[27. *Bequest of mining plant, &c., on trusts for sale, &c., the proceeds to become capital money*, p. 681, f. 2, *mutatis mutandis*.]

Bequest
of heir-
looms (a).

28. *Bequest of articles such as "my service of plate marked with the — crest," or "my collection of oil paintings," or furniture & effects in mansion house (b) to go as heirlooms with the mansion house or with the settled land*, p. 735, f. 12.

29. *Specific legacies*, pp. 725 et seq.

30. *Immediate pecuniary legacy to wife*, p. 759, f. 8.

31. *General legacies*, pp. 757 et seq.

32. *Annuities*, pp. 773 et seq.

33. *Direction to appropriate fund to answer annuities*, p. 778, f. 16.

34. *Bequest of residuary personal estate on trusts for sale & conversion & for payment of funeral & testamentary expenses*,

(a) Compare the form in *Settlements (Real)*, ante, p. 682, f. 3, and see note (c) thereto.

(b) Where a testator has two houses an exception of "such articles as shall at my death be in or about the same only for some temporary purpose," may usefully be inserted: see *Re Earl of Stamford*, 22 T. L. R. 632; and a further exception may be made of "such articles as from their trifling value or unimportant or perishable nature my trustees shall consider to be unsuitable for heirlooms." See *Re Smith-Bosanquet*, 53 Sol. J. 430.

&c., & subject thereto on trusts corresponding to the trusts of the settled land, p. 851, f. 44.

35. *Clause extending statutory power of appropriation, p. 833, f. 5.*

36. *Power to settle questions & apportion blended funds, p. 834, f. 9.*

37. *Power to professional trustee to charge, p. 835, f. 10.*

[38. *Marginal notes not to form part of will, p. 859, f. 20.]*

Testimonium & attestation, pp. 859-861.

XXVII.

WILL giving FREEHOLDS, LEASEHOLDS, and HEIRLOOMS
to TESTATOR'S ISSUE in STRICT SETTLEMENT in the
MALE LINE. SHORT FORM.

Commencement, p. 718, f. 1.

1. *Appointmt of executors and trustees, p. 721, f. 2.*

[2. *Appointmt of guardians, p. 724, f. 11.]*

3. I DEVISE and bequeath all my freehd and leasehd ppty (hrinar called the settled land) to my trees upon trust that my trees or other the pson or psons in whom the legal este in the settled land shl for the time being be vested as tenant for life or staty owner throf within the meang of the Settled Land Act, 1925, shl by the creon of such legal este in or charge by way of legal mtge upon the settled land or any pt or pts throf or by such other means as may be reasbly necy for that ppose raise the annual & gross sums followg [free from death duties], to be pd & applied in mner hrinar mentd, that is to say :—

Divise
and be-
quest
upon
trusts for
raising.

(i.) In case of deficiency of my psonal este, such sum as may be sufficient for dischargg my funl & testy expses debts & legacies, to be paid to my exors & applied by them for that ppose.

Funeral
and testa-
mentary
expenses,
etc., in
aid of
personal
estate.
Jointure
for wife.

(ii.) An annuity of £—— commencg from my death, to be pd to my wife K. if survivg durg her life on the usual qtr days, & so that durg any future coverture the same shl be witht power of antieipon.

(iii.) The sum of £—— for each child of mine who being a

Portions

for testa-
tor's
younger
children.

son attains the age of twenty-one yrs or being a daur attains that age or marries, except any son or sons who bfe attaing the age of twenty-one yrs shl become entitled under this my will to a life intt in posson in the settled land.

Mainten-
ance of
younger
children
of testa-
tor.

(iv.) Such annual sum for the maintnee, educon, or benefit of each child of mine, who if of full age wd be immedly entitled to a portion, as my trees shl think fit, such annual sum not to exceed intt at the rate of £4 p.c. p.a. on such portion & to be so applied by my trees or to be pd by them to the guardians or guardian of such child, for such ppose witht seeing to the applicon throf.

Advance-
ment of
younger
children
of testa-
tor.

(v.) Such sum not exceedg a moiety of the expectant or presumptive portion of any child of mine as my trees shl think fit, to be applied for the advancemt or benefit of such child in such mner as my trees shl think fit, & to be treated as pt of the portion of such child if he or she shl become entitled thereto.

Succes-
sive life
interests
to sons
with re-
mainders
to grand-
sons in
tail male.

4. My trees or such other pson or psons in whom the legal este in the settled land shl for the time being be vested as afsd shl hold the same subject & charged as afsd Upon the trusts & with & subjt to the pwrs & provons hrinar decl'd concerng the same, that is to say :—

(i.) In trust for my sons severally and successively accordg to seniority for life, WITH an immediate remr after the death of each of my sons IN TRUST for his sons severally & successively acedg to seniority in tail male WITH AN ultimate remr IN TRUST for my own right hrs.

(ii.) Every life intt hrinbfe limd shl be witht impeachmt of waste.

(iii.) Provd always (a) & I declare that if any gdson of mine in trust for whom an intt in tail male by pchase, &c., *continue proviso cutting down intts in tail to life intts*, p. 839, f. 14, saying “with remr in TRUST for his sons severally & successively acedg to seniority in tail male.”

(iv.) *Power to sons to jointure*, p. 847, f. 32.

(v.) *Power to sons to charge portions*, p. 847, f. 34.

(vi.) *Provon that charge of rent charge or portions shl not take effect unless pson charging or his issue entled in posson*, p 675, f. 30.

(a) Cf. the form in *Re Lawrence*, [1915] 1 Ch. 133.

(vii.) *Provon limity total amt chargable for rent charges & portions*, p. 676, f. 31.

5. I DECLARE that my trees or such other pson or psons in whom the legal este in the settled land shl for the time being be vested as afsd may exercise over or in relation to the settled land, *continue clauses extending powers of S. L. Act*, p. 848, f. 36.

6, &c. *Continue as in last Prec.*, p. 912, *clauses 17 to end*, *mutatis mutandis*.

Testimonium & attestation, pp. 859-861.

XXVIII.

WILL devising REAL ESTATE in STRICT SETTLEMENT for securing RENT-CHARGE to TESTATOR'S WIFE, in augmentation of her JOINTURE, and subject thereto as to PART of ESTATES to a SON and his WIFE and ISSUE in TAIL GENERAL, and as to the REMAINDER to a DAUGHTER and her HUSBAND and ISSUE in TAIL GENERAL, with CROSS LIMITATIONS on FAILURE of the PRIMARY LIMITATIONS. ULTERIOR LIMITATIONS of ONE PART of ESTATES by REFERENCE to the LIMITATIONS of the other PART. CHARGE on PART of the ESTATES of SUMS required for PAYMENT of MORTGAGE and other DEBTS in aid of PERSONALTY, and of a SUM to be at the TESTATOR'S WIFE'S DISPOSAL by WILL. DEVISE of LAND to GO WITH ESTATES devised by a FORMER TESTATOR.

Commencemt, p. 718, f. 1.

1. *Appointmt of executors & trustees*, p. 721, f. 2.

[2. *Appointmt of guardians*, p. 724, f. 11.]

3. I DEVISE all the messes, farms, lands, & ppty, situate, &c., wch I pchased of —, & wch were conveyed to me by an indre dated, &c., & made, &c., with the appurts throf, to my trees upon the trusts & subjt to the powers & provons upon & subjt to wch the ppty known as the — Este, situate, &c., was devised by the will dated, &c., & proved, &c., of — deced, or such of the same trusts powers & provons as shl at my death be subsistg or capable of takg effect to the intent that the sd ppty so pchased by me as afsd may from & after my

Devise of
lands to
go with
settled
estates.

death devolve & be held & enjoyed with the sd — este, but not so as to increase or multiply charges or powers of chargg (a).

General
devise
and be-
quest of
freeholds
and lease-
holds.

4. *General devise & bequest of all other freehold & leasehold estates*, p. 837, f. 2, saying "all of wch freehd & leasehd ppty hby devised is hrinar collectively refd to as the settled ppty, to my trees Upon the sevl trusts & with & subjt to the several powers & provons hrinar declared concerning the same respby, that is to say :—

As to
freeholds
in Kent
upon
trusts in
aid of
personal
estate.

(i.) As to & concerng my lands, messes, & ppty situate in the Parishes of — or elsewhere in the County of Kent, Upon trust that my trees or other the pson or psons in whom the legal este in the same ppty shl for the time being be vested as tenant for life or staty owner throf within the meang of the Settled Land Act, 1925, shl as soon as conveniently may be after my death, by the creon of such legal este in or charge by way of legal mtge upon the sd ppty or any pt or pts throf or by such other means as may be reasbly necy for that ppose raise in aid & in case of deficiency of or, "in exoneron of" my psonal este, such sum or sums of moy as may be sufft to dischge my funl and testy expenses & debts, includg any mtge debts chgd on any pt of the settled land in exoneron of such land thfrom, and the legacies given by this my will or any codl hto, & the duty on any legacies & annties given free of duty, & the duties leviabale or chgeable at my death on any sum of moy (whether gross or annl) hby chgd on or made payable out of the settled land & given free from death duties, & shl pay & apply such moys acedly And upon further trust that my trees or such or pson or psons as afsd shl, as soon as conveniently may be after the death of my wife, by all or any of the means afsd raise such sum or sums of moy not exceedg in the whole the sum of £——, with intt for the same at the rate of £—— p.c. p.a. from her death, as my wife shl by her will or any codl thereto direct or appt, & shl pay & apply such sum or sums & intt to such pson or psons & for such pposes as my wife shl by her will or any codl thereto appt or bequeath the same.

(ii.) As to & concerng my sd lands, messes, & ppty situate in

(a) See another form, *ante*, p. 744, f. 23, and notes thereto.

the County of Kent, but subjt to & chgd with the paymt of the ppal sums hrinbfe made raisable & payable thereout as afsd, And as to & concerng all the residue of the settled land Upon Trust, &c., *continue limitation of rent-charge to testator's wife during widowhood*, "in augmentation of the jointure provd for her by the settlemt made on our marre," p. 839, f. **12**.

Limita-
tion of
jointure
to testa-
tor's
widow.

(iii.) As to & concerng my estes & ppty situate in the County of Sussex, subjt to & charged with the sd rent-charge & all powers & remedies for securg the same, IN TRUST, &c., *continue limitation to testor's son D. for life*, p. 838, f. **7**, *remr to D.'s wife E.*, "if survivg," *for life*, p. 838, f. **8**, *remr to his first & other sons in tail general*, p. 839, f. **13**, *remr to his daurs as tenants in common in tail general*, p. 839, f. **16**, *remr to testor's daughter F. for life without anticipon*, p. 838, f. **8**, *remr to her husbd G.*, "if survivg," *for life*, p. 838, f. **7**, *remr to F.'s first & other sons in tail general*, p. 839, f. **13**, *remr to F.'s daughters as tenants in common in tail general*, p. 839, f. **16**; *Utlterior remrs to collaterals*.

Limita-
tions of
Sussex
estates.

(iv.) As to & concerng my sd estes & ppty in the County of Kent, & all the remr of the settled land other than my sd estes & ppty in the County of Sussex, subjt as to all such estes to the sd rent-charge & the powers & remedies for securg the same, & subjt as to my Kent Estes to & charged with the paymt of the ppal sums hrinbfe made raisable & payable thereout IN TRUST, &c., *continue limitations to daughter F. & her husband successively for life & her issue in tail as above*, *remr to son D. & his wife successively for life & his issue in tail as above*, WITH REMR upon such & the same trusts as are hrinbfe declared & expressed of & concerng my sd estes & ppty in the County of Sussex, to take effect after the several deaths of my sd son & daur & their respective wife & husbd & the failure of issue of their respective bodies.

Limita-
tions of
Kent
estates.

(v.) *Proviso cutting down entailed interests of persons born in testator's life*, p. 839, f. **14**.

(vi.) As betn the psons who may become entitled to my estes in the County of Kent & the psons entitled to the other estes charged with the sd rent-charge of £—— hrinbfe limited to my wife (& so that this declaron shl not affect the rights or remedies of my wife or her assns for the recovery of the sd rent-charge), my Kent estes shl be liable for the paymt of,

Declara-
tion as to
incidence
of rent-
charge as
between
the
several
estates.

one eq^l third, pt only of the sd rent-charge & the costs & expses of raisg the same, & the residue of my estes h^{rinbfe} charged therewith sh^l be liable for the paymt of the residue of the sd rent-charge, costs & expses.

Power to
tenant
for life to
jointure.

(vii.) If the sd D. sh^l survive the sd E. & marry again, he may, &c., *continue power to appoint a jointure to an after-taken wife*, p. 671, f. **24**, saying "to be charged upon all or any of the ppty of which the sd D. sh^l be or become tenant for life under this my will, but subj^t to the estes intts & charges precedg or havg priority to the life intt of the sd D."

(viii.) *Correspondg power to F. to appoint a rent-charge to an after-taken husband*, p. 672, f. **26**, *mutatis mutandis*.

(ix.), (x.) *Power to tenants for life of "the settled land or any pt throf" other than D. & F. to charge jointures & rent-charges for wives & husbds*, p. 847, ff. **32, 33**, *mutatis mutandis*, saying, "to be charged upon the premes of weh the pson exercisg this psnt power sh^l be or become tenant for life.

(xi.) *Power to tenants for life, includg D. & F., to charge portions*, p. 847, f. **34**, *with similar variations*.

(xii.) *Provision that charge of rent-charge or portions sh^l not take effect unless person charging or his or her issue entitled in possession*, p. 675, f. **30**.

(xiii.) *Provision limitg total amount chargeable for rent-charges & portions on "my sd estes & ppty situate in the County of Kent,"* p. 676, f. **31**, *mutatis mutandis*, saying "(inclusive of the proportion of the sd rent-charge h^{by} limited to my wife, if payable, for weh such last-mentd estes sh^l become liable)."

(xiv.) *Similar provision limitg total amt chargeable on Sussex estates*.

(xv.) I declare that my trees or other the pson or psons in whom the legal este in the settled land or any pt throf sh^l for the time being be vested as tenant for life or staty owner throf within the meaning of the Settled Land Act, 1925, may exercise over or in relation to the settled land or such pt throf, as the case may be, all or any of the powers, &c., *continue clause extending powers of S. L. Act*, p. 848, f. **36**.

(xvi.-xxv.) *Continue as in Prec. XXVI.*, p. 912, *Clauses 17*

to 26, adding provision as to capl moy arisg from different estes (a), p. 687, f. 2.

5. *Specific legacies*, pp. 725 et seq.

6. *General legacies*, pp. 757 et seq.

7. *Residuary bequest of personal este*, subject to paymt of debts includg mige debts to son D. absolutely, p. 784, f. 5.

8, &c. *Continue as in Prec. XXVI.*, p. 913, clauses 35 to end. *Testimonium & attestation*, pp. 859-861.

(a) Where estates are settled with divergent limitations, and there are incumbrances affecting the whole, the incumbrances may be apportioned, as follows:—

“ALL capital moy wch at my death shl be charged on the settled land or on any pt or pts throf shl be apportioned on the pts throf wch devolve on different psons under the provons of this my will in mner followg, that is to say:—

Appor-
tionment
of incum-
brances
charged
on
settled
land.

(i.) The sum apportioned in respt of each such pt of the settled land shl bear the same ratio to the total value of such capital moy as the value of the pt of the settled land in respt of wch it is apportioned bears to the total value of the settled land.

(ii.) For the ppose of this provon the value of the settled land or of any pt throf shl be taken to be the value at wch the same shl be assessed for este duty at my death.

(iii.) The pt of the settled land wch devolves on any pson in mner afsd shl be charged with the sum apportioned as afsd in respt of such pt & a pper deed of indemnity shl be executed at the cost of such pson containing such provons for the indemnity of the other pts of the settled land against the paymt of such sum & of the intt accruing after my death in respt throf as my trees think fit.”

MISCELLANEOUS.

XXIX.

WILL of REAL and PERSONAL PROPERTY on TRUST for CONVERSION and DISPENSING as far as may be with the intervention of TRUSTEES, PROVIDING for WIFE NOT LEGALLY MARRIED to the testator and his ILLEGITIMATE CHILDREN by her. GIFT of ANNUITY to WIFE. GIFTS of REAL and PERSONAL ESTATE to CHILDREN NOMINATIM, to VEST IMMEDIATELY, with SUBSTITUTION of ISSUE for children DYING BEFORE TESTATOR, and GIFT OVER and ACCRUER as to CHILDREN DYING under 21 WITHOUT ISSUE.

Commencement, p. 718, f. 1.

1. *Appointmt of executors & trustees*, p. 721, f. 2.

2. *Appointmt of guardians (a)*, p. 724, f. 11.

3. *Specific legacies & devises to wife & children*, pp. 725 et seq. & 736 et seq., describing wife as "my wife (b) A.," and describing each child by name when first mentioned, so as to identify it.

4. *General legacies*, pp. 757 et seq.

5. *Annuity to "my sd wife A."* p. 775, ff. 3 or 4.

6. *General devise & bequest to trustees in trust for sale & conversion*, p. 781, f. 1, & p. 785, f. 1.

7. *Trust of proceeds of sale & conversion for paymt of debts, &c.*, p. 789, f. 3.

Descrip-
tion of
wife not
legally
married.

(a) Although this is not a valid appointment, effect would probably be given to it by the Court.

(b) Where a testator make a gift to his "wife" the gift is valid in favour of a woman who bears the reputation of being his wife, whether he has gone through the ceremony of marriage with her (*Re Boddington*, 25 Ch. D. 685; *Re Wagstaff*, [1908] 1 Ch. 162) or not (*Lepine v. Bean*, L. R. 10 Eq. 160) unless the will shows that she is not to take unless she is really his wife: *Re Boddington*, *sup.*; *Re Bleckly*, [1920] 1 Ch. 450. The question as to the effect of a woman fraudulently concealing from the husband the facts that make the marriage invalid is discussed in *Meluish v. Milton*, 3 Ch. D. 27. Where the gift to the wife is "during widowhood" it means "till she marries after the testator's death": *Re Wagstaff*, *sup.*, at p. 166; *Re Hammond*, [1911] 2 Ch. 342. A gift to "A. the wife of B." where A. was reputed to be the wife of B. but was not married to him was upheld in *Anderson v. Berkley*, [1902] 1 Ch. 936.

8. *Trust for investment*, p. 791, f. 4.

9. MY TREES shl stand possed of the residue of the sd moys (wch moys & the investmts for the time being representg the same are hrinar called the trust fund) IN TRUST for my chln hrinbfe named & any chln (c) or reputed chln I may hrafter

Trusts of residue for children.

(c) Although "children," *primâ facie*, means lawful children, a bequest to "children," without a more specific description, has, in some cases (as in *Holt v. Sindrey*, L. R. 7 Eq. 170; *Savage v. Robertson*, *ib.* 176; *Lepine v. Bean*, L. R. 10 Eq. 160; *Hill v. Crook*, L. R. 6 H. L. 265; *Laker v. Hordern*, 1 Ch. D. 644; *Re Humphries*, 24 Ch. D. 691; *Re Bryon*, 30 Ch. D. 110; *Re Haseldine*, 31 Ch. D. 511; *Re Horner*, 37 Ch. D. 695; *Re Harrison*, [1894] 1 Ch. 561; *Re Plant*, 43 Sol. J. 63; *Re Eve*, [1909] 1 Ch. 796; *Re Bleckly*, [1920] 1 Ch. 450), been held good in favour of existing illegitimate children, where a sufficiently strong indication of intention was apparent. As to illegitimate children taking under a gift to "issue," see *Re Walker*, [1897] 2 Ch. 238; and as to an illegitimate nephew taking under a gift to "nephews," see *Re Parker*, [1897] 2 Ch. 208; *Re Helliwell*, [1916] 2 Ch. 580. There is, however, considerable risk of a bequest to illegitimate children in such general terms failing (see instances of failure in *Dorin v. Dorin*, L. R. 7 H. L. 568; *Paul v. Children*, L. R. 12 Eq. 16; *Re Ayles*, 1 Ch. D. 282; *Megson v. Hindle*, 15 Ch. D. 198; *Re Bolton*, 31 Ch. D. 542), and the safe and proper course is to designate the objects, by naming them or otherwise, so as clearly to identify them: *Re Human*, 49 Sol. J. 551; *Re Kiddle*, 92 L. T. 724.

Gifts to illegitimate children.

Where a gift is made to "the children of A.," who has both legitimate and illegitimate children, only the legitimate children can take (*Re Embury*, [1914] W. N. 220), even if the testator believed that they were all legitimate: *Re Pearce*, [1914] 1 Ch. 254. A similar gift is bad where A. has no legitimate children but his illegitimate children were believed by testator to be legitimate: *Re Taylor*, [1925] Ch. 739. It follows that where a testator has children by a woman born some before and some after their marriage and he intends all the children to take, it is necessary to make the gifts to the children born before the marriage *nomination*. In such a case the usual trust for children may take the form following:—"for such of my chln now living, namely, A., B. & C.," *naming both illegitimate & legitimate children*, "& my chln who shl be born hereafter."

Gifts to "children" where some legitimate and others not.

It had been supposed that a gift by will to future born illegitimate children, whether of the testator himself, or another person, was wholly invalid on the ground of public policy, but the contrary has been established by recent cases as to children born, or begotten, after the will in the testator's lifetime: *Occleston v. Fullalove*, L. R. 9 Ch. 147; *Re Goodwin*, L. R. 17 Eq. 345; *Crook v. Hill*, 3 Ch. D. 773; *Re Hastie*, 35 Ch. D. 728; *In the estate of Frogley*, [1905] P. 137; *Re Loveland*, [1906] 1 Ch. 542. These cases, however, leave untouched the rule that there cannot be a valid gift to a future illegitimate child described solely by reference to its paternity, evidence of paternity not being admissible: *Occleston v. Fullalove*, *sup.*; *Re Bolton*, 31 Ch. D. 542. Where therefore the gift is to the future illegitimate children of a man, or of a woman by a particular man, it is safer, in the present state of the authorities, if the gift is extended

have by my sd wife A. (all of whom are included in the expression " my chln " & their issue in the expression " my grandchln " when hrinr used) if more than one in eql shares.

Substitu-
tion of
issue for
children
dying.

10. IF ANY of my sd chln shl have died in my lifetime leavg issue livg at my death (a) such issue shl take by substitution if more than one as tenants in common in eql shares the share in the trust fund wch such deced child wd have taken under the trusts hrinbfe declared in this my will if he or she had survived me.

Gift over
and ac-
cruer as
to chil-

11. IF ANY of my sd chln shl die in my lifetime witht leavg issue livg at my death, or shl survive me & afterwards die witht havg attained the age of twenty-one yrs & witht leavg

to afterborn children, to say, " children, or reputed children," as in the text. It seems, however, that where the gift is necessarily, from the circumstances of the case, to illegitimate children, as where a marriage between the parties is impossible, or where (as in this Precedent) the gift is to the testator's own children, and would therefore be revoked by a marriage (assuming that it is not under a special power of appointment within the exception in s. 18 of the Wills Act), the expression " children," *simpliciter*, may be used, so as to avoid referring on the face of the will to the illegitimacy, and that effect would be given to such a bequest in favour of all children born in the testator's lifetime, and acknowledged and recognised by the putative father as his: see *Re Goodwin*, L. R. 17 Eq. 345; *Re Mayo*, [1901] 1 Ch. 404. As to a gift to children legitimated by subsequent marriage by the law of the father's domicile, see *Re Andros*, 24 Ch. D. 637; *Re Grey*, [1892] 3 Ch. 88; and Legitimacy Act, 1926, s. 8. It is established by the cases above referred to, that if such a gift to a class fails as to some of the intended objects (as where it extends to children born after the testator's death), the whole fund will go to the remaining objects: see *Ebborn v. Fowler*, [1909] 1 Ch. 578, a case of a deed. As to illegitimate " relatives," see *Seale-Hayne v. Jodrell*, [1891] A. C. 304; *Re Deakin*, [1894] 3 Ch. 565; *Re Corsellis*, [1906] 2 Ch. 316. As to gifts to the next-of-kin of a bastard, see *Re Wood*, [1902] 2 Ch. 542, and to the heir of a childless bastard, see *Re Cullum*, [1924] 1 Ch. 540.

Children
born
before
marriage.

A limitation to " A. the child of B. & C.," where B. and C. are husband and wife, and A., their child, was born before the marriage at a time when they lawfully could marry, is valid, although A. has not acquired the reputation of being their child; see *Sir Moyle Finch's Case*, 6 Co. Rep. at p. 65a. As to legitimated persons, see Legitimacy Act, 1926, s. 3.

In lieu of " chln or reputed chln, &c." in the text, it might be better to say, " chln of mine by my sd wife A. who may hrafter be born in my lifetime or within due time after my death;" see *Re Hastie*, 35 Ch. D. 728.

Effect of
marrying
mistress.

It should be borne in mind that a will in favour of a reputed wife and the testator's children by her, would be revoked by his subsequently marrying her: *Warter v. Warter*, 15 P. D. 152.

(a) As the children are illegitimate, a gift to a child so dying would not be saved from lapse by the Wills Act, 1837, s. 33.

issue livg at his or her death, then the share in the trust fund hrinbfe given to him or her & also the pecuniary legacies bequeathed to the child so dying shl as from the time of the death of the survor of myself & such child sink into my residuary este & the share in the trust fund hrinbfe given to such child, inclusive of any share accruing to him or her by virtue of this psnt provon, shl go & accrue to the others or other of my sd chln or grandchln to whom the trust fund is hrinbfe given, if more than one in the same shares & proportions in wch the trust fund is hrinbfe made divisble, & be added to & devolve with their, his, or her origl shares or share.

dren dying under 21 without issue.

12. MY TREES shl invest every legacy & all moys formg pt of any share of the trust fund at their discron & in their names, &c., *continue investmt clauses*, pp. 829 *et seq.*, with power to vary such investmts at discron, & shl transfer such investmts to any pson or psons of full age becomg absolutely entitled thereto.

Investment clause.

13. *Power to appropriate fund to answer annuity to wife*, p. 778, f. 16.

14, &c. *Add such of clauses 25-31 of Prec. IX.*, p. 872, as may be required.

Testimonium & attestation, pp. 859-861.

XXX.

WILL of MARRIED MAN *providing for the event of his DYING SIMULTANEOUSLY with his WIFE (a).*

Commencement, p. 718, f. 1.

1. I APPT my wife B. sole executrix & tree of this my will, but if she shl die bfe me or shl survive me but die bfe provg

Appointment of executor.

(a) This will is intended to provide for the contingency of the testator dying simultaneously (or nearly so) with his wife, and especially so as to prevent his testamentary wishes being frustrated in the event of this happening under circumstances (such as a shipwreck) which would leave no means of ascertaining which died first. Previously to 1926 there was no presumption of law as to survivorship or simultaneous death, and in each case it was a question of evidence; *Wing v. Angrave*, 8 H. L. C. 188. If this contingency were to have happened, and the will were in the form of a gift to the wife if surviving and in the converse event to other parties, it would have failed altogether, and his intentions been defeated: see *In b. Alston*, [1892] P. 142.

Mode of providing for testator and wife dying simultaneously.

this my will or shl not prove the same within three calr months after my death, then I appt C. sole exor & tree throf.

[2. *Appointmt of guardians*, p. 724, f. 11.]

3. *Specific legacies*, pp. 725 *et seq.*

4. *General legacies*, pp. 757 *et seq.*

Residu-
ary gift.

5. *General devise & bequest* "to my sd tree," in trust for sale & conversion, p. 781, f. 1, & p. 785, f. 1.

6. *Trust of proceeds of sale & conversion for payment of debts, &c.*, p. 789, f. 3.

7. *Trust for investment*, p. 791, f. 4.

Trust of
residue
as wife
shall
appoint.

8. MY SD tree shl stand possed of the residue of the sd moys (wch moys & the investments for the time being reprsng the same are hrinar called the trust fund) IN TRUST for such pson or psons for such pposes & in such mnner in all respects as my wife if survivg me shl at any time or times by deed or deeds revocable or irrevocable or by will or codl appt, it being my express wish & intention that my wife if she survives me may if she thinks fit make the trust fund or any pt throf her own by an exercise of the power of apptmt hby conferred on her, or may abrogate or modify to any extent & in any mnner she may think fit the dispositions throf hrinar made by me in the event of her not exercising such power.

Trust in

9. IN DEFAULT of & subjt to any such apptmt my sd tree

But s. 184 of the L. P. Act, 1925, has altered this rule in the case of deaths after 1925 by providing that such deaths shall, subject to any order of the Court, for all purposes affecting the title to property be presumed to have occurred in order of seniority, *i.e.* that the younger shall be presumed to have survived the elder. In order to avoid reliance upon this presumption of law an absolute overriding power of appointment by deed or will is given to the wife which is equivalent to an absolute bequest to her, except that to make the property her own she must execute a deed. In the event of her not surviving or not exercising the power, the alternative dispositions will take effect, so that in the event of such a catastrophe as is supposed, the will would operate whichever may have survived. A similar will would usually be made by the wife, to the extent of her testamentary capacity under the M. W. P. Acts (as to which see *ante*, p. 907, note) or otherwise; see another form of concurrent will at 15 Encycl. Prec. 437.

Where two persons make mutual wills disposing of property in pursuance of a mutual agreement, the survivor is bound by the agreement, and cannot subsequently alter the disposition of his property: *Stone v. Hoskins*, [1905] P. 194, but the circumstances must be strong enough to infer a trust: *Re Oldham*, [1925] Ch. 75. By the mutual wills of joint tenants, a joint tenancy may be severed: *In b. Heys*, [1914] P. 192.

shl stand possed of the trust fund UPON TRUST that my wife if survivg me shl receive the income throf durg her life for her own absolute benefit. default of
appoint-
ment.

10, &c. AFTER THE death of my wife, &c., *continue such ulterior trusts & other usual provisions as may be required, see Prec. IX., p. 870.*

Testimonium & attestation, pp. 859-861.

XXXI.

SHORT WILL EMBODYING the INSTRUCTIONS for the WILL, where the TESTATOR is IN EXTREMIS, and there is no time for the preparation of a formal WILL (a).

I, —, of —, declare this to be my last & only will; *Appointmt of exs & trustees, p. 721, f. 2*; I GIVE all my real & psonal este to my trees upon trust to carry out the followg instructions; AND I give to them or other the trees or tree of this my will the fullest & most absolute authority & discron as to the mode of doing so, includg power to execute & do all such settlemts, assuresses, declarons of trust & other instrumts & acts as they or he may think expedient for that ppose, & also power to modify or depart from the sd instructions to any extent that may be deemed neey or desirable in order to carry out my general intentions & wishes as thrin expressed or to make the dispositions conformable to law. *Copy of instructions.*

Testimonium & attestation, pp. 859-861.

(a) It is hardly necessary to say that this device should not be resorted to except in case of urgent necessity. See the next Precedent for a form of will using the Statutory Will Forms, 1925.

XXXII.

SHORT WILL *giving LIFE INTEREST to WIFE with remainder to ISSUE by reference to the STATUTORY WILL FORMS, 1925 (a), where the TESTATOR is IN EXTREMIS.*

Commencement, p. 718, f. 1.

Appointment of exors & trees, p. 721, f. 2.

1. I BEQUEATH £—— & my psonal chattels to my wife absolutely.

2. I DEVISE & bequeath all my ppty includg ppty in wch I have an entailed intt in posson not orwise disposed of to my trees.

3. THE FOLLOWING forms of the Staty Will Forms, 1925, are incorporated in this my will namely forms 1, 2, 3, & 6 of Part I., & forms 8 & 9 of Part II.

Testimonium & attestation, pp. 859–861.

XXXIII.

WILL REVIVING a WILL and CODICILS *previously REVOKED.*

I, A., of, &c., declare this to be my last will : I hBY revive & confirm a will dated, &c. [& two codls thereto dated respdy, &c.], formerly made by me, wch sd will [& codls] I revoked on the —— day of ——.

Testimonium & attestation, pp. 859–861.

CODICILS.

XXXIV.

CODICIL SUBSTITUTING an EXECUTOR and TRUSTEE *for one APPOINTED by the Will and ALTERING LEGACIES.*

Substitu-
tion of
executor

Commencement, p. 719, f. 3; I hBY revoke the apptmt of K. as one of the exs & trees of my will; AND I revoke the legacy

(a) See the Statutory Will Forms, 1925, *post*, p. 938. It is not as a rule desirable to make a will by reference to these forms, but in an emergency it may be useful to do so.

of £—— given by my sd will to the sd K. as an exor & tree throf, [but I hby confirm all other gifts made by my sd will [& the prior codls thereto] to the sd K. benefly (a)]; AND I HBY appt M., of, &c., to be an exor & tree of my sd will in the place of the sd K.; AND I DECLARE that my sd will [& former codl[s]] & all the devises, bequests, powers, & provons thrin contained, shl be construed & take effect in all respects as if the name of the sd M. had been origilly inserted thrin throughout (b) in lieu of the name of the sd K. as an exor & tree throf, & I give the sum of £—— to the sd M., in case he proves my will & accepts the trusts throf; I GIVE a legacy of £—— to N. in addition to the legacy of £—— given to him by my sd will, & I revoke the legacy of £—— thereby given to P.; AND IN ALL other respects I confirm my sd will [as altered by the sd former codl[s] thereto (c)].

and trustee.

Alteration of legacies.

Confirmation of will.

Testimonium & attestation, p. 859, ff. 2 & 4.

XXXV.

CODICIL appointing an ADDITIONAL TRUSTEE and EXECUTOR, and INCREASING ANNUITY and TRUST LEGACIES (d).

Commcent, p. 719, f. 3; I HBY APPT M., of, &c., to be an exor & tree of my will to act jointly with K. & L. who are

Appointment of executor

(a) See *Re Freeman*, [1910] 1 Ch. 683.

(b) Where benefits were given by the will to K. independently of his being executor, and it is not intended that these should be revoked, the use of the word "throughout" without reference to executorship may give rise to difficulty: *Re Freeman, sup.*; *Re Mellor*, 56 Sol. J. 596. Where a codicil substitutes a new trustee for one of those to whom the legal estate was devised by the will, the codicil passes the legal estate to the new trustee; *Re Turner*, 2 De G. F. & J. 527.

(c) The general effect of the confirmation by codicil of a will, or of a will as altered by former codicils, is to bring the will down to the date of the present codicil, so as to take effect as if it had been a new will executed at that date, containing the dispositions of the original will, or of the original will as altered by the former codicils: *Re Fraser*, [1904] 1 Ch. at p. 734; *Re Taylor*, [1909] W. N. 59; *Re Wedgwood*, [1914] 2 Ch. 245; *Re Aynsley*, [1914] 2 Ch. 422, 429; *Re Hardyman*, [1925] Ch. 287; but this is not so for all purposes: e.g. where benefits are given by the will subject to a condition, and the condition is fulfilled before the date of the codicil, the codicil does not re-impose it: *Re Park*, [1910] 2 Ch. 322.

Effect of confirmation of will by codicil.

(d) As to substituted legacies, see *Re Joseph*, [1908] 2 Ch. 507; *Re Backhouse*, [1916] 1 Ch. 65.

and trustee. thereby appted exs & trees, AND I DECLARE that my sd will [& the former codl[s] thereto] shl be construed & take effect in all respects as if the names of the sd K., L., & M. had been origly inserted thrin throughout in lieu of the names of the sd K. & L. as exs & trees throf (e), AND I hby give a legacy of £—— to the sd M. for his trouble; I DIRECT that the annuity of £—— by my sd will given to my wife A. durg her life [widowhood] shl be increased to £——, & that such increased annuity shl be payable at the like times & secd in like mner & be subjt in all respects to the like condons & provons as the sd annuity of £——; AND I DECLARE that the legacy of £—— given by my sd will in trust for each of my daurs & her issue, or in trust for the issue of any daur dying in my lifetime, shl be increased to £——, & that such respective increased legacies shl be held upon & subjt to all the trusts & provons contained in my sd will wch are applicable to the sd respective legacies of £—— each thereby given in trust as afsd; AND IN ALL other respects I confirm my sd will [as altered by the sd former codl[s] thereto].

Testimonium & attestation, p. 859, ff. 2 & 4.

XXXVI.

CODICIL *giving share of RESIDUE to the CHILDREN of a SON who has DIED, in SUBSTITUTION for their PARENT, and REVOKING the SHARE given to ANOTHER SON (a).*

Substituted gift to children.

Commcent, p. 719, f. 3; WHAS my son K. died on the —— day of ——, leavg —— chln: Now I HBY declare that such of the chln of my sd son K. as shl survive me & being male attain the age of twenty-one yrs or being female attain that age or marry shl take by substitution as tenants in common in eql shares if more than one, the share in my residuary este or the trust premes representg the same wch the sd K. wd have taken had he survived me: AND I revoke

Revocation of

(e) See note (b) on last page.

(a) This codicil is adapted to the case where the gift to the son K. would fail by his death in the testator's lifetime, owing to his being comprised in a class, see *ante*, p. 802, note (a).

the trust & bequest contained in my sd will of a share in the sd residuary este & premes in favour of my son L., And I declare that my sd will (as hrinbfe altered) shl operate & take effect in the same mner as if the sd L. had been excluded by my sd will from takg a share in the sd residuary este & premes & the number of shares into wch the same is divisible were reduced accordgly; AND in all other respects I confirm my sd will.

Testimonium & attestation, p. 859, ff. 2 & 4.

XXXVII.

CODICIL *directing that SUM ADVANCED to DAUGHTER on her MARRIAGE and ADVANCES made to a SON shall be BROUGHT into ACCOUNT, and SETTling the DAUGHTER'S SHARE of RESIDUE.*

Commencement, p. 719, f. 3.

1. WHAS ON the marre of my daur K. I transferred stks & secs wch I estimate to be of the aggregate value of £—— as her marre portion to the trees of her settlemt; Now I HBY declare that such stks & secs shl be taken at the afsd value of £—— in or towards satisfson of the share in my residuary trust este given by my sd will to the sd K., & shl be brought into hotchpot & accounted for accordgly.

2. I FURTHER declare that the share by my sd will given to the sd K. in my residuary trust este shl not be pd or transferred to or vest absolutely in her, but shl be retained by my trees & held Upon the trusts & subjt to the powers & provons hrinar declared & contained concerng the same that is to say:—(i.), (ii.), &c., *continue settlemt of daughter's share*, pp. 811 *et seq.*

(b) The general rule is that a share of residue, the gift of which is revoked, lapses: *Cresswell v. Cheslyn*, 2 Eden, 123; but where the original gift was to a class (*Re Dunster*, [1909] 1 Ch. 103), the share falls back into residue; and the codicil may so alter the residuary gift that the share revoked may again become part of it: *Re Wilkins*, [1920] 2 Ch. 63. It is desirable, however, to be very explicit in re-disposing of the share. Revocation of a life interest does not necessarily revoke the interests in remainder: *Re Whitehorne*, [1906] 2 Ch. 121; *Re McEacharn*, 55 Sol. J. 204. As to inconsistent gifts of residue in a will and in a codicil, see *Re Stoodley*, [1916] 1 Ch. 242; and see as to the doctrine of conditional revocation, *Re Churchill*, [1917] 1 Ch. 206, and the cases there cited.

Revoca-
tion of
share of
residue.

3. WHAS SINCE the date of my sd will I have made advances to my son L. or for his benefit amtg altogr to £——; Now I DIRECT that such sum of £—— with intt thron from my death at the rate of £—— p.c. p.a. shl be brought into account in the way of hotchpot by my sd son in the division of my residuary este.

4. IN ALL other respects I confirm my sd will.

Testimonium & attestation, p. 859, ff. 2 & 4.

XXXVIII.

CODICIL *devising* FREEHOLDS CONTRACTED to be PURCHASED, and directing that PURCHASE-MONEY shall be PAID out of GENERAL ESTATE (a).

Commencement, p. 719, f. 3; WHAS I have lately contracted to pchase from —— a freehd messe & lands, situate, &c., at the price of £——, of wch I have pd the sum of £—— by way of deposit; Now I HBY DEVISE the sd messes, lands & premes to —— for his absolute benefit [in addition to the dispositions in his favour contained in my sd will]; AND IN the event of the pchase of the same not havg been completed in my life-time, I direct that my exs shl pay to the sd —— out of my genl psonal este the sum of £—— being the balance remaing due of the sd pchase-moy, with the intt (if any) & all costs & expses payable under the sd contract of pchase, in order to enable him or them to complete the sd pchase; AND in all other respects I confirm my sd will.

Testimonium & attestation, p. 859, ff. 2 & 4.

(a) Unless, as in this Precedent, a contrary intention is signified, a vendor's lien attaches in such a case, and the devisee takes the real estate charged with the unpaid purchase-money: *Re Cockcroft*, 24 Ch. D. 94. See *ante*, p. 742, note (a). But in *Kettlewell v. Watson*, 26 Ch. D. 501, Lord Lindley's words, at p. 507, suggest that the time for completion must have arrived in order that the lien may attach, and the question as to whether this is so becomes important where the testator dies before the date fixed by the contract for completion. In *Hood v. Hood*, 26 L. J. Ch. 616, a case before Locke King's Act, 1877, it was assumed that the vendor's lien had attached at the death of the testator, although the date for completion was not until after the testator's death. A lien for unpaid purchase-money is included in s. 35 of the A. E. Act, 1925, as a charge primarily payable by a devisee unless the will otherwise directs.

XXXIX.

CODICIL *providing for the case of FREEHOLDS or LEASEHOLDS given SPECIFICALLY by a WILL being SOLD in the TESTATOR'S LIFETIME (b).*

Commencement, p. 719, f. 3: I DECLARE that if any of the freehd & leasehd ppty by my sd will specifically devised or bequeathed for the benefit of my wife & sons & their wives & chln or remoter issue shl in my lifetime be sold or agrd to be sold, so that the same premes or any pt throf cannot be held upon the trusts or for the pposes or devolve in the mnner by my sd will declared or expressed concerng the same, then the trees of my sd will shl raise out of my residuary este in respt of each portion of the sd premes wch may have been so sold or agrd to be sold, a sum of moy eql to the pchase-moy throf; AND I DECLARE that the sum or sums so raised shl be held by the sd trees upon the trusts & with & subjt to the powers & provons upon & subjt to wch such sum or sums wd have been held if the premes in respt whrof the same shl be raised had upon my death become subjt to the trusts powers & provons by my sd will declared concerng them, & such sums or sum had been moy arisg from the sale of the same premes immedly after my death under the powers of sale in my sd will contained; Provd ALSO & I declare that until the sum or sums so to be raised as afsd shl have been raised & invested, the same respective sum or sums or so much throf as for the time being shl not have been actually raised & invested shl carry interest at the rate of £3 p.c. p.a. from my death, wch intt shl be payable by my exs out of my este & shl be applied & disposed of in the same mnner as the income of the investmts representg the same sum or sums would have been applicable under this codl to my sd will if the same had been raised & invested; AND in all other respects I confirm my sd will.

Testimonium & attestation, p. 859, ff. 2 & 4.

(b) See *Beddington v. Baumann*, [1903] A. C. 13, a case of a testamentary appointment.

XL.

CODICIL CONFIRMING *a voluntary DEED OF GIFT to CHARITY (c).*

Commencement, p. 719, f. 3.

1. WHAS I have lately pchased certain ppty site at, &c., & by a convce dated, &c., & made between, &c., the sd ppty was conveyed to the sd — in fee simple upon certain charitable trusts thrin deeld. Now I hby devise the sd ppty in the event of my death within twelve calr mos after the making of the sd convce including in those twelve mos the days of the making of the sd convce & of my death to the sd — in fee simple upon the trusts in that convce deeld.

2. I DIRECT that any death duties wech by reason of my death may become payable in respect of the sd ppty & the intt payable in respect of such duties shl be pd by my trees out of my residy este (d).

3. In all respects save in so far as this Codl may affect the same I confirm my sd will.

Testimonium & attestation, p. 859, ff 2 & 4.

XLI.

CODICIL *by a WIDOW CONFIRMING a WILL made in her HUSBAND'S LIFETIME under a POWER, which ceased to be operative owing to his death (e), and bequeathing JEWELLERY, &c., by reference to SEPARATE PAPER.*

Commcent, p. 719, f. 3: WHAS since the date of my sd will [& the former codls thereto], my husbd — has died, whereby

(c) See Mortmain & Charit. Uses Act, 1888, s. 4 (7); Mortmain & Charit. Uses Act, 1891, s. 5, *ante*, p. 875, note (d).

(d) See Finance (1909-10) Act, 1910, s. 59, and *ante*, p. 768, note (h).

(e) See *ante*, p. 907, note. The will exercising the power will take effect on the absolute interest by virtue of the M. W. P. Act, 1893, s. 3: *Re James*, [1910] 1 Ch. 157; but it is better to make a new will. As to the circumstances in which an original appointment by will remains operative notwithstanding an invalid appointment by codicil, see *Re Bernard's Settlement*, [1916] 1 Ch. 552. A gift by will impliedly revoked by a gift in a codicil itself bad for perpetuity, is restored and takes effect: *Ward v. Van der Loeff*, [1924] A. C. 653.

the power of apptmt contained in my marre settlemt & purportg to be exercised by my sd will [& codls] has become inoperative, & the ppty wch was the subjt of such power has become benefly vested in me absolutely; Now I DIRECT that every disposition in my sd will [& former codls] wch operated by way of apptmt under the sd power thrin referred to, or was expressed or intended so to do, shl operate & take effect as a disposition of or in respt of my benefl este & intt in the sd ppty purportg to be thereby appted; AND I DEVISE & bequeath such ppty & all my este & intt thrin accordgly so as to give effect to the dispositions contained in my sd will [& codls]; AND I FURTHER DECLARE that the residuary devise & bequest contained in my sd will shl comprise all the real & psonal este wch I am now able to dispose of & wch wd have passed thereby if my sd will had been made now; AND WHAS I am desirous of disposg of divers articles of jewellery, furniture, & other effects by reference to a separate paper or memorandum wch I have signed with my name & deposited with this codl for the ppose of identificon: Now I HBY BEQUEATH the several articles & effects wch are specified in the paper or memorandum so deposited by me as afsd to the respective psons or legatees for whom such respective articles & effects are intended by me as expressed in such paper or memorandum; AND I DECLARE that all bequests hby made by reference to such separate paper or memorandum shl be free of duty, wch shl be pd out of my general psonal este; AND I FURTHER DECLARE that any & every question wch may arise as to what articles are comprised in the respective bequests hby made by reference as afsd, or as to the mode of division of any such articles or effects, or orwise in relation to any such bequest or to such paper or memorandum as afsd, shl be determined by my exs whose decision shl

Confr-
mation of
appoint-
ment.

Gift of
jewellery,
&c., by
reference
to sepa-
rate paper
(a).

(a) A bequest made by reference to a separate paper will not be legally valid unless the paper is actually in existence at the time the bequest is made. The paper should be signed and deposited with the will to prevent doubt as to what document is intended to be referred to; and, although it need not be attested as a codicil, it will have to be incorporated with the will when proved; and it will be necessary to make a fresh codicil whenever the paper is altered. See *Durham v. Northen*, [1895] P. 66; *In bonis Smart*, [1902] P. 238. This mode of disposition is therefore very inconvenient, and there is always considerable risk of its miscarrying. A better plan is to make a simple request not binding on the legatee, as at p. 734, f. 10; see note to that form.

As to be-
queathing
chattels
by refer-
ence to
separate
paper.

be final ; AND I REVOKE the bequests & dispositions contained in my will, so far as may be neey to give effect to the bequests hrin contained by reference as afsd, but not further or orwise ; AND in all other respects I confirm my sd will. *Testimonium & attestation*, p. 859, ff. 2 & 4.

XLII.

CODICIL *correcting* CLERICAL ERRORS in a WILL (b).

Commcement, p. 719, f. 3 ; I DECLARE that my sd will shl be read & construed & take effect in all respects, FIRST, as if the word “——” had been inserted after the word “——” in the —— line of the —— page throf ; and SECONDLY, as if the words “——” had been substituted for the words “——” in the —— line of the —— page throf ; AND in all other respects I confirm my sd will. *Testimonium & attestation*, p. 859, ff. 2 & 4.

XLIII.

CODICIL by a MAN on his SECOND MARRIAGE, giving his WIFE an ANNUITY, and CONFIRMING a WILL made BEFORE and REVOKED by such MARRIAGE.

Commcement, p. 719, f. 3 ; *Gift of annuity to wife*, p. 775, f. 3 : AND IN all other respects I confirm my sd will, & direct that it shl operate as if I had re-executed it on this —— day of ——. *Testimonium & attestation*, p. 859, ff. 2 & 4.

(b) The confirmation by codicil of a will containing unattested alterations may have the effect of embodying the alterations : *Tyler v. Merchant Taylors' Co.*, 15 P. D. 216 ; but cf. *Re Hay*, [1904] 1 Ch. 317.

XLIV.

REVOCATION of a WILL (a).

I, A., of, &c., hereby revoke a will made by me bearing date, &c., & all other testy dispositions whatsoever made by me, & declare it to be my intention to die intestate. IN WITNESS whereof I have hereunto set my hand this — day of —.

Signed by the above-named — in
the presence of, &c., continue at—
testation clause as at p. 859, f. 4. }

SUCCESSION ON INTESTACY.

Of all the changes in the law made by Lord Birkenhead's Acts, none is more important than the abolition of the old laws and customs of devolution of property on intestacy, and the enactment of a new code applicable to property of every description (except unbarred entailed interests) in cases of deaths of persons intestate after 1925. This new code is contained in Part IV. of the A. E. Act, 1925.

All the old modes, rules and canons of descent and of devolution, by special occupancy or otherwise, of real and personal property operating either at law or by custom of gavelkind, borough English, or by local or manorial custom, including tenancy by the curtesy, dower and freebench, and every other interest of a wife in the real estate of an intestate husband, are abolished. Rights to freebench or other like rights attached before 1926 which are incapable of being barred by the husband are, unless released, preserved as equitable interests. All rights of escheat to the Crown or the Duchy of Lancaster, or the Duke of Cornwall, or to a mesne lord are abolished: A. E. Act, 1925, s. 45. The sole exception to this sweeping abolition is contained in s. 51 (2) in cases of lunatics or defectives living on the 1st January, 1926, who die intestate without recovering testamentary capacity.

The beneficial interests in the residuary estate of an intestate, *i.e.* such part of the estate as is not required for the purposes of administration: s. 33 (4): are distributable under s. 46 as follows:—

I. Where the intestate dies unmarried or a widower or widow without issue:

(a) Although a will may be revoked by burning, tearing, &c., *animo revocandi* (Wills Act, 1837, s. 20); it may sometimes be desirable to put the intention on record. The revocation should expressly extend to codicils, if any: see *ante*, p. 718, note (c).

Revocation grounded on an assumption of fact which is false takes effect unless, as a matter of construction, the truth of the fact is a condition of the revocation, so that the revocation is contingent upon the fact being true: *In the Estate of Southerdon*, [1925] P. 177.

Abolition
of old
rules and
customs
of
descent.

New rules
of succes-
sion.

- (i) Both parents absolutely in equal shares.
- (ii) Surviving parent absolutely.
- (iii) Surviving brothers and sisters of the whole blood on the statutory trusts.
- (iv) Surviving brothers and sisters of the half blood on the statutory trusts.
- (v) Surviving grandparents if more than one in equal shares.
- (vi) Surviving uncles and aunts of the whole blood on the statutory trusts.
- (vii) Surviving uncles and aunts of the half blood on the statutory trusts.
- (viii) The Crown or Duchy of Lancaster or Duke of Cornwall as *bona vacantia*.

II. Where the intestate dies a widower or widow leaving issue :

- (i) Issue on the statutory trusts.
- (ii) If no issue attain vested interest, then as in I.

III. Where the intestate leaves a surviving husband or wife but no issue :

- (i) Surviving husband or wife takes (a) the personal chattels (defined in s. 55 (1) (x)), (β) £1,000 absolutely, and (γ) life interest in all the rest of the property.
- (ii) The rest of the property subject to the life interest devolves as in I. except that the surviving husband or wife is admitted to take absolutely before the Crown.

IV. Where the intestate leaves a husband or wife and issue :

- (i) Surviving husband or wife takes (a) the personal chattels defined as above, (β) £1,000 absolutely and (γ) life interest in one half of the rest of the property.
- (ii) The rest of the property subject to the life interest in one half is held upon the statutory trusts for the issue.
- (iii) If the trusts for issue fail in the lifetime of the surviving husband or wife a life interest in the whole property is substituted for the life interest in one half in (i) above.
- (iv) Subject to the life interest in one half or the whole as the case may be as in III. (ii) : see s. 47 (2) (a).

Statutory
trusts on
intestacy.

The statutory trusts are declared by s. 47 (1) and follow the trusts for children and issue, usually declared by testators and settlors. All the children take equally on attaining twenty-one or (whether male or female) on marrying under twenty-one, the issue of children predeceasing the intestate taking per stirpes their parent's share. The statutory powers of maintenance, accumulation and advancement, apply, and an infant on marriage can give a valid receipt for the income of his or her share. Any advancement of money or other property made by the intestate to or for the benefit of a child, including a life or less interest, and including property covenanted to be paid or settled, is, subject to any contrary intention expressed or appearing from the circumstances, to be brought into hotchpot with the child's share under the statutory trusts, and the value of the advanced property is reckoned as at the death of the intestate. The personal representatives may permit an infant contingently entitled to have the use and enjoyment of any personal chattels (defined in s. 55 (1) (x)) as they may consider reasonable.

Where the beneficiaries under the statutory trusts are any class of

relatives other than the issue of the intestate, the trusts are the same as in the case of issue, except that advanced property or money need not be brought into hotchpot: s. 47 (3). By the provisions of this sub-section nephews and nieces and first cousins and their respective issue are let in as representing their parents, through each degree.

The life interest in one half or the whole of the residue to which a surviving husband or wife is entitled, may be redeemed with his or her consent, or, where such surviving husband or wife is sole personal representative, with the leave of the Court, by payment of the capital value thereof (whilst in possession) reckoned according to tables selected by the personal representative to the life tenant: s. 48 (1).

Redemption of life interest.

The personal representatives may raise the £1,000 given to the surviving husband or wife and any capital sum required for redemption of a life interest, and in either case the costs of the transaction on the security of the whole or any part of the residuary estate except the personal chattels so far as such estate has not been appropriated by them under the power conferred on them by s. 41: s. 48 (2).

Raising of capital sums.

Part IV. of the Act applies to partial intestacies, subject to the following modifications: (i) the issue of the deceased, but not other persons, must bring any beneficial interests they may take under the will into hotchpot, and (ii) the personal representative is constituted a trustee of the property to which the intestacy applies unless it appear from the will that he is to take beneficially: s. 49.

Partial intestacy.

References in an instrument *inter vivos* made or in a will coming into operation after 1925, to any Statutes of Distribution are construed as references to Part IV. of the A. E. Act, 1925, and references to next of kin to the persons who take under the provisions of Part IV., unless the context otherwise requires: s. 50 (1). Such references in instruments made or wills coming into operation before 1926, are construed as references to the old law other than the Intestate's Estates Act, 1890: s. 50 (2).

References to Statutes of Distribution and next of kin.

A child who has been adopted under an adoption order retains his rights of succession on intestacy to the property of his natural relations whether such intestacy occur before or after the making of the order, but is excluded from any such rights to the property of the adopter: Adoption of Children Act, 1926, s. 5 (2).

Adopted children.

By s. 3 of the Legitimacy Act, 1926, a person legitimated under that Act and his spouse, children, or more remote issue, are entitled to the same interest in the estate of an intestate dying after the date of legitimation, *i.e.* the 1st January, 1927, or the date of the marriage of the parents of the legitimated person whichever is the later, in the same manner as if the legitimated person had been born legitimate. When the right to take depends upon seniority, *e.g.* under an entailed interest which must have been created after the date of legitimation, legitimated persons rank in competition with persons born legitimate as if born on the date of legitimation and between themselves in order of seniority if legitimated at the same time. A legitimated person is not entitled to any property limited to devolve with a dignity or title of honour. The section applies only if and so far as a contrary intention is not expressed in the disposition.

Rights of legitimated person to take interests in property.

The succession on the death intestate of a legitimated person or his child, or remoter issue, to all or any of his real or personal property is the same as if the legitimated person had been born legitimate: s. 4. The spouse, children, or remoter issue of an illegitimate person dying before the marriage of his parents who are themselves living at the date of such

Succession on intestacy of legitimated persons.

marriage take the same interests in property as if the illegitimate person had been legitimated : s. 5.

The rate of death duty leviable in all cases is the same as if the legitimated person had been born legitimate : s. 7.

Mutual
rights of
succe-
sion of
mother
and ille-
gitimate
child.

An illegitimate child who is not legitimated, or if dead his children, has the same right to take upon the death of his mother intestate as if he had been born legitimate, but only where the mother leaves no surviving legitimate issue : s. 9. The same section permits the mother of an illegitimate child dying intestate to take any interest in his property which she would have taken had he been born legitimate and had she been the only surviving parent. This section does not apply to or effect the right of any person to take by purchase or descent any entailed interest or real or personal property.

STATUTORY WILL FORMS.

Short
title.

1. The forms hereinafter contained may be cited as the Statutory Will Forms, 1925, and are divided into two groups called Part I. and Part II. respectively.

Manner
of appli-
cation.

2. The Forms in Part I. may be incorporated in a will by a general reference to that Part, and the Forms in Part I. and Part II. or any of them may be incorporated in a will in manner indicated in the Schedule hereto or in any other manner indicating an intention to incorporate them, and in the case of Forms in Part II. also indicating what property or disposition is to be affected thereby.

Interpre-
tation.

3. (i) In any form when incorporated in a will—

(i) The provisions thereof shall have effect subject to the express provisions of the will ;

(ii) “ Disposition ” means a devise, bequest, and a testamentary appointment, whether in exercise of a general or special power and includes a disposition under the statutory power to dispose of entailed interests by will ; “ dispose of ” has a corresponding meaning ; and references to a testator’s property include property which he disposes of in exercise of a power ;

(iii) “ The trustees ” mean the trustees appointed by the testator either generally or for a specific purpose, as the case may require, and the persons who by appointment by the court or otherwise become the trustees, and include his personal representatives, when acting as his trustees :

- (iv) " Authorised investments " mean investments authorised by the will creating the trust, for the investment of any money subject to the trusts of the will, or by law.
- (v) Other words and expressions have the same meanings as in the Law of Property Act, 1925.

FORMS.

PART I.

FORMS WHICH MAY BE APPLIED EITHER GENERALLY OR BY SPECIFIC REFERENCE.

I.

Confirmation of Settlements.

I confirm every settlement of property made by me which is subsisting at my death, and subject to any express provision to the contrary in my will, the provisions made by my will for the benefit of persons beneficially interested under any such settlement, shall be in addition to, and not in satisfaction of, those made, or covenanted to be made by me in such settlement.

II.

Meaning of " Personal Chattels."

(1) " Personal chattels " shall mean " carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament (including wearing apparel), also musical and scientific instruments and apparatus, wines, liquors, and consumable stores, but shall not include any chattels used at my death for business purposes, nor money or securities for money."

(2) But a general disposition of personal chattels shall take effect subject to any specific disposition.

III.

Inventories and Provisions respecting Chattels.

(1) An inventory of chattels given by my will, otherwise than by way of absolute gift, shall be made in duplicate, one part

shall be retained by the trustees and the other part shall be delivered to the person of full age for the time being entitled to the use or possession of the chattels, in this clause called the "usufructuary."

(2) A receipt shall be signed by the usufructuary, at the foot of the inventory retained by the trustees.

(3) The inventory delivered to the usufructuary shall, if he so requires, be signed at the foot thereof by the trustees.

(4) On any change of the right to the use or possession of the chattels, a new receipt shall be signed by the usufructuary at the foot of the inventory retained by the trustees.

(5) Where, by reason of the exercise of any power to sell, exchange, purchase, alter the fashion of, or otherwise deal with the chattels, or of any destruction or loss of any chattel, the inventories become inaccurate, the inventories shall be altered and re-signed, or new inventories shall, if convenient, be made and signed.

(6) The trustees may, at their discretion, exclude from an inventory, any chattels which, by reason of their trifling value or wearing out nature, they may consider ought to be so excluded.

(7) Where the chattels have been delivered to the usufructuary and a receipt is given therefor, the trustees, so long as the usufructuary remains entitled to the use of the chattels, shall not be liable in any way—

(a) for any unauthorised disposition thereof or dealing therewith,

(b) to see to the insurance (so far as the same are capable of being insured) repair, or safe custody of the chattels,

unless and until required, in writing, to insure the chattels or to take any proceedings in reference thereto, by some person beneficially interested in the chattels or by his guardian, committee or receiver, and unless also due provision be made, to the satisfaction of the trustees, for the payment of the costs of insurance or of any proceedings required to be taken.

(8) Where there is no person of full age and capacity entitled to the use of the chattels, the trustees may, during the period of disability, make such arrangements for the safe custody, repair, insurance and use of the chattels as, having regard to the circumstances of the case, they may in their absolute discretion, think expedient.

IV.

Legacies to Charities.

The receipt of the treasurer or other proper officer of a charitable benevolent or philanthropic institution, society or body of persons (corporate or incorporate), to which a legacy is given by my will shall be a complete discharge of my personal representatives.

V.

Directions respecting Annuities.

The following provisions shall have effect in regard to any annuities or annuity given by my will—

- (1) The trustees may, and (if so requested by or on behalf of any person beneficially interested in the property affected), shall, as soon as may be after any annuity commences to accrue, set apart in their names or under their control authorised investments to provide a fund the income whereof will be sufficient, in the opinion of the trustees, to produce an annual sum equal to the amount of the annuities for the time being payable under my will.
- (2) The income or, if necessary, the capital of the fund so appropriated, shall be applied in payment of every subsisting annuity.
- (3) Until a fund shall be so appropriated, my residuary estate shall stand charged with the payment of every subsisting annuity, but, after appropriation, the said estate shall be thereby discharged therefrom.
- (4) The appropriated fund, or, where more than one annuity is bequeathed, such parts thereof as, in the opinion of the trustees, may not be required to answer any subsisting annuity, shall, on the cesser of an annuity, fall into my residuary personal estate.
- (5) Accordingly, as each annuity ceases, the trustees may treat as part of my residuary personal estate, the whole or a corresponding part of the appropriated fund, as the case may require, retaining only such part thereof (if any) as may, from time to time, in their opinion, be sufficient to produce, by the income thereof, an annual sum equal to the amount of any subsisting annuities.

- (6) Any surplus income of the appropriated fund shall be applied in the same manner as the income of my residuary personal estate.
- (7) The trustees may, at their discretion, vary any of the investments for the time being representing the appropriated fund for other authorised investments.
- (8) In this clause "annuity" includes any periodical payment (not being a rentcharge) for life or other terminable interest.

VI.

Power of Appropriation.

(1) The power of appropriation conferred by the Administration of Estates Act, 1925, shall be exercisable by the trustees, without any of the consents made requisite by that Act.

(2) So far as practicable, the trustees shall give one month's notice, at least, of an intended appropriation, to the persons whose consent would, but for this clause, be required under that Act; but a purchaser shall not be concerned to see or inquire whether any such notices have been given.

(3) In this clause "trustees" includes my personal representatives.

PART II.

FORMS WHICH CAN ONLY BE APPLIED BY SPECIFIC
REFERENCE.

VII.

Trusts of a Settled Legacy.

Any legacy of money or investments to which this clause is applied shall be subject to the following provisions:—

- (1) The trustees shall stand possessed of the legacy upon trust to invest the same in their names or under their control in any authorised investments, with power, at the like discretion, to vary the investments thereof for others of a like nature.
- (2) The trustees shall stand possessed of the legacy, and of the investments representing the same and all statu-

tory accumulations, if any, of income thereof, herein-after included in the description of such legacy upon trust to pay the income thereof to the legatee during the life of the legatee.

- (3) After the death of the legatee, the capital and income of the legacy shall be held—

In trust for all or any one or more exclusively of the other or others, of the issue of the legatee, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement, and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as the legatee shall, by deed, revocable or irrevocable, or by will appoint ; but so that, under any appointment a child shall not, otherwise than by way of advancement, take a vested interest, except upon attaining the age of twenty-one years or upon marriage.

And in default of and until and subject to any such appointment—

In trust for all or any the children or child of the legatee, who attain the age of twenty-one years, or marry under that age, and if more than one in equal shares.

- (4) Any child of the legatee, who, or whose issue, takes any part of the legacy under any appointment by the legatee, shall not, in the absence of any direction by the legatee to the contrary, take any share in the unappointed part without bringing the share or shares appointed to him or his issue into hotchpot and accounting for the same accordingly.
- (5) If the legatee shall not have any child who, under the trusts in default of appointment hereinbefore contained, attains a vested interest in the legacy, then, subject to the trusts and powers hereinbefore expressed in favour of the legatee and his issue, the legacy and the income thereof and all statutory accumulations, if any, of income shall fall into and form part of my residuary personal estate.

- (6) The legatee may, notwithstanding any of the trusts hereinbefore expressed concerning his legacy, from time to time or at any time by deed, revocable or irrevocable, or by will, appoint to or for the benefit of any spouse who may survive the legatee, during the residue of the life of such spouse or for any less period (and subject or not to any conditions, and with such gifts over, and discretionary or other trusts for the benefit of the spouse and issue of the legatee, as the legatee may think fit), all or any part of the annual income of the legacy of the legatee, or of so much thereof as shall not, before the death of the legatee, have been paid or applied under any power affecting the same,

And, upon any such appointment, the trusts and powers limited to take effect after the death of the legatee, shall take effect subject to the interest limited by any such appointment :

Provided that the power last aforesaid, to appoint by deed, shall not be exercisable by a woman while under coverture.

VIII.

Administration Trusts.

Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions :—

- (1) The property shall be held—
- (a) as to the real property, if any, including chattels real, upon trust to sell the same, and
 - (b) as to the personal property, if any, upon trust to call in, sell, and convert into money such part thereof as may not consist of money.
- (2) The trustees shall have power to postpone such sale and conversion for such a period as they, without being liable to account, may think proper.
- (3) A reversionary interest shall not be sold, until it falls into possession, unless the trustees see special reason for sale.

- (4) The trustees shall out of the net money to arise from the sale and conversion of the property (after payment of costs, and out of any ready money of mine, included in the disposition, pay or provide for
 - (a) my funeral and testamentary expenses ;
 - (b) my debts, except charges on other property of mine so far as those charges are discharged out of the property primarily charged therewith under the Administration of Estates Act, 1925 ;
 - (c) the duties, payable out of capital on my death, and not charged on or primarily payable out of other property ;
 - (d) any other liabilities properly payable out of the property, or the proceeds of sale thereof ;
 - (e) the legacies (including money directed to be paid by my will), and annuities bequeathed by me, but so that all legacies and annuities, and the duty on all legacies and annuities bequeathed free of duty, shall be paid primarily out of personal property, if any, included in the disposition.
- (5) The trustees may invest, in their names or under their control, the residue of the said money, or so much thereof as may not have been distributed, in any authorised investments, with power, at their discretion, to vary such investments for others of a like nature.
- (6) The income (including net rents and profits of real property and chattels real, after payment of rates, taxes, rent, costs of insurance and of repairs and other outgoings properly attributable to income) of so much of the property as is not required for the administration purposes aforesaid, shall, however the property is invested, as from my death, be treated and applied as income ; and for that purpose any necessary apportionment may be made between capital and income.
- (7) Provided that—
 - (a) statutory accumulations of income made during a minority, or pending a contingency, or

accumulations made under an express trust for accumulation, may be added to capital ;

- (b) income may be applied in effecting and maintaining a leasehold sinking fund policy, or may be set aside and invested for providing a fund to answer any liabilities which in the opinion of the trustees ought to be borne by income ;
- (c) the trustees may in their discretion adjust, in such manner as they shall think fit, having regard to the circumstances of the case, the incidence, as between capital and income, of the payments made in due course of administration.

IX.

Trusts for Spouse for Life with Power to Appoint to Issue and Gift over to them.

Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions :—

- (1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.
- (2) After the death of my spouse, the capital and income of the property shall be held—
 - (i) In trust for all or any one or more, exclusively of the other or others, of my issue, whether children or remoter descendants, at such time, and if more than one in such shares, with such provisions for maintenance, education, advancement and otherwise, at the discretion of any person or persons, and with such gifts over, and generally in such manner, for the benefit of such issue, or some or one of them, as my spouse shall, by deed, revocable or irrevocable, or by will, appoint ; but so that, under any appointment, a child shall not, otherwise than by way of advancement, take

a vested interest, except upon attaining the age of twenty-one years or upon marriage.

- (ii) And in default of and until and subject to any such appointment in trust, in equal shares if more than one, for all or any my children or child who survive me and attain the age of twenty-one years or marry under that age, and for all or any of the issue living at my death who attain the age of twenty-one years or marry under that age of any child of mine who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share or shares which his or their parent would have taken if living at my death, and so that no issue shall take whose parent is living at my death and so capable of taking.
- (3) Any person who, or whose issue, takes any part of the property, under any appointment by my spouse, shall not, in the absence of any direction by my spouse to the contrary, take any share in the unappointed part, without bringing the shares appointed to such person or his issue into hotchpot, and accounting for the same accordingly.

X.

Trusts for Spouse and Issue, without a Power of Appointment.

Any property disposed of by my will (otherwise than in exercise of a special power) to which this clause is applied shall be subject to the following provisions :—

- (1) The property (including the investments for the time being representing the same) shall be held upon trust to pay the income thereof to my spouse for life.
- (2) After the death of my spouse the capital and income of the property shall be held in trust, in equal shares if more than one, for all or any my children or child, who survive me and attain the age of twenty-one years or marry under age, and for all or any of the issue living at my death, who attain the age of twenty-one years or marry under that age, of any child of mine

who predeceases me, such issue to take through all degrees, according to their stocks, in equal shares, if more than one, the share or shares which his or their parent would have taken if living at my death; and so that no issue shall take whose parent is living at my death and so capable of taking.

Schedule.

INCORPORATION OF ALL THE FORMS IN PART I.

All the forms contained in Part I. of the Statutory Will Forms, 1925, are incorporated in my will [subject to the following modifications, namely *].

* Here insert the modifications (if any).

INCORPORATION OF SPECIFIED FORMS FROM PART I.

The following forms contained in Part I. of the Statutory Will Forms, 1925, shall be incorporated in my will :—

[Specify those of the following forms which it is desired to incorporate.]

Form 1 (Confirmation of Settlements).

Form 2 (Meaning of "personal chattels").

Form 3 (Inventories and provisions respecting chattels).

Form 4 (Legacies to charities).

Form 5 (Directions respecting annuities).

Form 6 (Power of appropriation).

[Subject to the following modifications, namely * .]

* Here insert the modifications (if any).

INCORPORATION OF SPECIFIED FORMS FROM PART II.

FORM 7.

Trusts of a Settled Legacy.

Form 7 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to the following legacies * [subject to the following modifications †].

* Here insert the legacies of money or investments to be settled.

† Here insert the modifications (if any).

FORM 8.

Administration Trusts.

Form 8 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to * [subject to the following modifications †].

* Here insert description of property to be held upon administration trusts.

† Here insert the modifications (if any).

FORM 9.

Trusts for Spouse for Life with Power to Appoint to Issue and Gift over to them.

Form 9 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to * [subject to the following modifications †].

* Here insert description of the property to be held on trusts for spouse for life with power to appoint to issue and gift over to them.

† Here insert the modifications (if any).

FORM 10.

Trusts for Spouse and Issue without a Power of Appointment.

Form 10 of the Statutory Will Forms, 1925, is incorporated in my will, and shall apply to * [subject to the following modifications †].

* Here insert description of the property to be held on trusts for spouse and issue without power of appointment.

† Here insert the modifications (if any).

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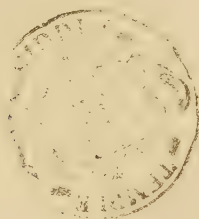
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